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TRADE AND INVESTMENT IV
KAZAKHSTAN & THE KYRGYZ REPUBLIC

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**Commercial Law Program Task Order
Trade and Investment IV
Kazakhstan and the Kyrgyz Republic**

Table of Contents

	Page No.
<hr/>	
Executive Summary	3
I. Background	5
II. Relevant Period Overview: Deliverables	6
III. Individual Kazakhstan Customs Deliverables Report.....	29
IV. Individual Kyrgyz Republic Customs Deliverables Report	37

Executive Summary

This report summarizes the results of Booz Allen Hamilton's accomplishments under the US Agency for International Development (USAID) Central Asia Trade and Investment Project ("Project") between March 15, 2000 to July 31, 2001. These accomplishments build on our already completed work under the USAID Trade and Investment projects in the Central Asian republics of Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan. While the scope of work of the Project initially included technical assistance to Turkmenistan and Uzbekistan, USAID determined that neither country was prepared to undertake the necessary legal and commercial reforms commensurate with the objective of this Project. As a result, technical efforts were discontinued in both of these republics early in the period of performance. The focus of the Project became exclusively Kazakhstan and the Kyrgyz Republic with the primary objective of providing technical assistance for the purpose of:

1. Establishing a sound trade and investment environment through modification of laws and regulatory provisions relating to international trade and foreign investment in Kazakhstan and the Kyrgyz Republic;
2. Improving the business environment at the local level by working with national and local governments to reduce administrative requirements that stifle business activities;
3. Accession to the World Trade Organization (WTO), and
4. Implementation of WTO agreements.

During the relevant period, the Project continued to build on the achievements of the past in the areas of trade and investment generally, and the relationships of the Governments of Kazakhstan (pre-accession) and the Kyrgyz Republic (post-accession) to the WTO in particular. The Project also concluded its previously intensive concentrations in several specific areas (government procurement, intellectual property) due to the reduction of the Project during the relevant period, and concluded its operations in Uzbekistan and Turkmenistan.

In the Kyrgyz Republic, the Project enjoyed a very-positive and cooperative working relationship with the Government of the Kyrgyz Republic in all areas, including WTO activities, Customs, and investment issues. Thus, the Project was able to provide a great deal of valuable assistance to the Kyrgyz Government and the business community in all of these areas, and progress was substantial.

In Kazakhstan, the situation was somewhat different. The Project and USAID spent much time and effort trying to persuade the Government of Kazakhstan (GOK) to allow the Project to provide the services and expert advice that would advance Kazakhstan's progress in WTO accession and other areas. Unfortunately, the GOK determined that its accession was at a point where substantive technical assistance was not desired, mainly due to Kazakhstan's position that the negotiation of its goods and services commitments was a highly-confidential process.

Nonetheless, the Project was able to provide some substantive WTO accession assistance, and a large amount of training and support (translation, materiel support, etc.). Kazakhstan's accession did progress, resulting in the submission of revised offers on goods and services and its first WTO Working Party

meeting in Geneva since October 1998 (according to the Office of the United States Trade Representative, the scheduling of this meeting was the direct result of the proactive intervention of the Project's Country Manager). Further, the Project worked closely with several agencies within the GOK (in particular, the Antidumping Committee and the Investment Committee) that welcomed the Project's assistance, and also enjoyed a positive and fruitful relationship with the Parliament, continuing to further Kazakhstan's WTO-required legal reform process.

In the area of Customs, all of the key components in both countries were completed with the exception of one in Kazakhstan. There were improvements in both Customs administration and notable achievements were experienced in several areas. However, as was the case throughout the project, some obstacles slowed down the Kazakhstan effort.

Finally, the Project assisted the new USAID Trade and Investment Project during its transition to achieve a more efficient and informed beginning to its work.

I. Background

Since 1995, the USAID Trade and Investment Project assisted the governments of Kazakhstan and the Kyrgyz Republic in applying for full membership in the WTO. Working parties for both countries were formed, and they both received observer status at the WTO. Both countries also established, with the assistance of the Project, inter-ministerial commissions to prepare necessary documents for accession to the WTO.

The Project developed excellent relationships with all members of the inter-ministerial commissions in Kazakhstan and the Kyrgyz Republic and assisted them in preparing their Memoranda of Foreign Trade Regime, which was submitted to the WTO Secretariat in Geneva by both countries in 1996.

The Project historically worked closely with both countries to implement the measures necessary to bring their trade and investment regimes into compliance with WTO. The USAID Trade and Investment Project worked closely with the commissions of both governments in identifying and preparing legal, regulatory, administrative, and procedural changes in order to ensure compliance with WTO principles and agreements. These included: amendments to the Customs Code and intellectual property-related legislation; enactment of dumping and procurement legislation; establishment of inquiry points; and changes in the fee structures for all trade-related transactions. A new government procurement law was passed in Kazakhstan, and the transparency and fairness of government procurement in the Kyrgyz Republic has improved considerably.

In addition to assistance regarding WTO accession, the Project has been providing advice on trade policy to the governments of both countries. As a result, trade has been significantly liberalized in both countries during the past several years.

Regarding the foreign investment regime, the USAID Trade and Investment Project had thoroughly analyzed major laws related to trade and investment, including the foreign investment laws of Kazakhstan and the Kyrgyz Republic, and compared them to those of other NIS countries, including Uzbekistan. Problems were identified, amendments were prepared, and problems concerning the amendments were discussed with the relevant government authorities of both countries. Amendments were submitted to the governments of both countries in order to clarify investors' rights regarding admission, treatment, guarantees, expropriation, and dispute settlement. A new law on foreign investment was passed in the Kyrgyz Republic in 1997, and amendments to Kazakhstan's foreign investment law improved the situation for investors in the summer of 1997. A new law is currently being drafted in Kazakhstan, and the Project provided advice and comment.

The USAID Trade and Investment Project also performed a detailed analysis of the Customs Code and related legislation in both countries, and has been assisting the customs committees of both countries, in close association with the local business communities.

Kazakhstan and the Kyrgyz Republic each require substantial additional technical assistance and training to support the transformation of their respective trade and investment regimes. For Kazakhstan, this means support for its application to join the WTO as well as implementation of reforms at the local level. The Kyrgyz Republic needs help in carrying out its responsibilities as a new WTO member, especially at the local level.

II. Relevant Period Overview: Deliverables

A. Improvement of Trade and Investment Environment

- 1. Provide recommendations to further liberalize foreign trade regimes. Produce an analytical report that evaluates each republic's trade policies, including quantitative restrictions (import and export licenses and quotas), state trading, import and export registration, import and export tariffs policies, foreign exchange policies and other non-tariff barriers to trade.**

Kazakhstan

The Project provided general advice throughout the term regarding the liberalization of Kazakhstan's trade regime. We also focused on, and gave substantial advice and assistance in, the areas of licensing and non-tariff barriers. The Project worked on amendments to the Law on Licensing and ensured that those amendments preserved the Law's WTO consistency. The Project also advised the GOK to reduce its licensing and registration requirements on imports and exports: however, the World Bank recently initiated a major and comprehensive licensing reform project (involving all domestic licensing, such as for pharmaceuticals and other controlled goods, as well as import and export licensing) at the Presidential level, and thus our advice to the GOK was, in effect, superseded. We shared all of our licensing information and analysis with the President's office to assist in this Project, and assisted the President's office to access foreign legal experts in the area of licensing of all types. We provided translation and review of memoranda regarding licensing regimes from foreign legal experts to the President's office.

The Project noted the increase in safeguards actions taken by the GOK against imports, and counseled the GOK to make sure to follow its WTO-consistent Safeguards law and the WTO Safeguards Agreement in its application of safeguards measures. The Project conducted an analysis of the GOK's safeguards actions and concluded that the GOK's determinations of injury to the domestic industry were insufficient, and thus arranged for training in this area from an American expert. In addition, the Project arranged for its Senior WTO Adviser, Mr. Ake Linden, to meet with officials administering these safeguards actions and more-specifically advise them on WTO consistency in the application of these measures.

The Project also lent assistance in the area of tariffs. In particular, the Project arranged for a local company, KERA, and its employee Ms. Farah Usmanova, to work closely with the Ministry of Economy and the WTO Interministerial Committee to revise Kazakhstan's WTO offer on goods. Ms. Usmanova, former Head of Department for WTO Affairs at the Ministry of Economy, brought her substantial experience to bear in spearheading this effort for the GOK, and provided direct assistance to the Deputy Prime Minister and others across the GOK in the process. As a result, Kazakhstan has offered to lower its tariffs substantially.

The Project, through KERA and Ms. Usmanova, also assisted in market liberalization through substantial revision of Kazakhstan's offer on services to the WTO. Through this offer, the GOK has indicated its intentions to liberalize further its market to a wide variety of services, including insurance, accounting, architecture, telecommunications, and legal services.

Finally, more generally in the area of market liberalization, the Project advised Ministry of Economy officials to engage the private openly and regularly on issues of tariff rate changes and services concessions, as the private sector will be most affected by such changes, and should be informing the decision-making process.

The Report prepared by the Project to USAID analyzes Kazakhstan's trade policies, including quantitative restrictions (import and export licenses and quotas), state trading, import and export registration, import and export tariff policies, foreign exchange policies, antidumping/countervailing measures and safeguards, government procurement and other non-tariff barriers to trade. The analysis concludes that in recent years Kazakhstan's legislation demonstrates great improvement toward liberalization, though certain problems with implementation remain, as well as policy shortcomings at the highest level of government.

In brief, the main overarching recommendation is that Kazakhstan must continue to open its economy to international actors. This will require true commitment at all levels to WTO accession, and all of the liberalization efforts that this requires.

Kyrgyz Republic

The Project staff analyzed the foreign trade regime of the Kyrgyz Republic. The analysis covered the export and import registration, tariff policies, quantitative restrictions, licensing, technical barriers to trade, sanitary and phytosanitary measures, antidumping, countervailing measures and safeguards, import duty drawback schemes, state trading practices, foreign exchange policies, government procurement, free economic zones, trade related investment measures, trade related ecology policies, and regulation of trade in transit. Generally, the foreign trade regime of the Kyrgyz Republic, affected to a great extent by its accession to the WTO and membership in the Belarus-Kazakhstan-Russia-Tajikistan Customs Union, remains very liberal. Some problems identified were related to the issues of a proper implementation of the trade measures.

The following recommendations/problems were provided/identified: (i) simplification of the procedure of adoption of customs tariffs; (ii) modification of the Kyrgyz Republic's WTO Goods Schedule required for application of combined tariff rates for the year 2001; (iii) compliance with automatic import licensing procedures that require that import licenses for tobacco, alcohol, precious stones and metals be issued within 10 days; (iv) certain certification procedures require approval from both specific testing body and the Kyrgyz Republic, whereas certification of one shall be sufficient; (v) regulations are unclear whether certification is required upon exports; (vi) export ban on molasses was not introduced in a proper legal form and must be justified under the provisions of Article XI of GATT 1994; (viii) there is an obvious necessity of developing an export promotion policy; (ix) overlapping free trade arrangements of the Kyrgyz Republic need to be coordinated.

2. Within the context of overall advancement of WTO accession, recommend changes in trade and investment practices in the following areas: (1) non-tariff barriers to trades; (2) legislative and regulatory guidelines setting the framework for the establishment and conduct of foreign investment; and (3) administrative barriers to increased foreign and domestic investment opportunities.

Kazakhstan

As noted in number one above, the project recommend changes in several areas of non-tariff barriers, including licensing and safeguards.

In regard to the framework for investment in Kazakhstan, and administrative barriers to investment, the Project provided advice and support directly to the Investment Committee of the Ministry of Foreign Affairs and its Director, Mr. Tlek Alzhanov. Particular assistance and recommendations included review and comment on the draft investment law of Kazakhstan, and analysis/criticism of the

nationalization/expropriation clause of the draft investment law. Further, the Project served as liaison between the Investment Committee and foreign experts in the area of Project Finance: the Project recommended that an overview of the GOK's administration of foreign project finance be conducted, and arranged for several meetings between experts and the Committee toward assistance in revising the GOK's project finance regime.

Finally, as noted in A.9 below, the Project urged the Investment Committee to work more closely with, and begin to coordinate with, local (i.e., oblast) investment agencies and potential recipients of investment. Many have identified this lack of communication/coordination between the national bodies and local agencies/recipients as one of the key administrative obstacles to enhanced opportunities for investment in specific oblasts, which suffer from a severe shortage of the tools, resources, and knowledge necessary to attract specific investment.

3. Evaluate customs declaration and import and export procedures, and propose amendments to streamline and speed up customs processing.

Please see Individual Kazakhstan Customs Deliverables Report starting on page 29, and Individual Kyrgyz Republic Customs Deliverables Report starting on page 37.

4. Recommend Revisions to customs implementing regulations and associated audit procedures.

Please see Individual Kazakhstan Customs Deliverables Report starting on page 29, and Individual Kyrgyz Republic Customs Deliverables Report starting on page 37.

5. Develop a Trade and Investment Internet Site in both Kazakhstan and the Kyrgyz Republic. This Web-Site shall contain relevant information pertaining to trade and investment issues in each country and provide a vehicle for local and foreign business in each country.

Kazakhstan

In Kazakhstan, the Project in the past helped to develop and update a website with the Investment Committee of the Ministry of Foreign Affairs, containing pertinent and up-to-date investment information. Responsibility for the site shifted recently to Kazinvest, a quasi-governmental investment agency. Project staff contacted representatives of Kazinvest on numerous occasions to offer assistance, both substantive and technical, on the maintenance and upkeep of the site. Staff discussed this with the head of Kazinvest, and a letter was sent detailing our offers of assistance. However, Kazinvest would not accept the assistance offered.

The Kazinvest site appears substantive and fairly up-to-date on investment issues. See C.8 below.

The Project also helped to develop a trade website at the Ministry of Economy. The website includes sections on Trade Policy, Trade Statistics, WTO Accession, Investment Policy, Industry, Agriculture, SMEs, Customs, and Foreign Trade Legislation. The Project regularly updated this website through November 2000. After that time, efforts to continue to update the site were rebuffed by Ministry officials.

The Project also provided the Ministry of Economy with Internet service during the year.

Kyrgyz Republic

The WTO Information Center under the MFTI was established in response to the request for assistance made by the Ministry. Esengul Omuraliev, Vice Prime Minister and Anna Marie Sigmund, the United States Ambassador to the Kyrgyz Republic hosted an official opening of the Center. Following the opening, a two-day training session on how to access to the WTO information resources on-line on CD-ROM was held. A WTO Secretariat expert dealing with information technologies was invited to deliver the lectures. About 20 representatives from the WTO Information Center and various government ministries and agencies attended the training session.

The Web Site of the Ministry of Foreign Trade and Industry was developed with the assistance of the Project. The Web Site is maintained by the WTO Information Center under the MFTI. This Site contains information focused on trade issues in the Kyrgyz Republic. The following information can be found at the Web Site:

- The main page of the site contains regularly updated news of the Ministry, Republic and WTO;
- Reports on meetings of the trade commissions with the CIS and other countries;
- A list of products exported by the Kyrgyz producers with the names of exporters and their full addresses;
- Annual reports on trade balance of the Republic for each year since 1999;
- The commitments on tariff rates and subsidies taken by the Kyrgyz Republic under the WTO, in Russian;
- History of the process of the Kyrgyz Republic's accession to the WTO;
- Texts of the Protocol of Accession, and the Working Party Report which describes terms of accession of the Kyrgyz Republic to the WTO.
- The following information can be downloaded:
 - The Kyrgyz Customs Tariff for the current year;
 - Texts of the Uruguay Round Agreements in Russian,
 - WTO brochures "WTO in brief", "10 common misunderstandings about the WTO", and "10 benefits of the WTO", which provide the general information on the WTO, have been translated into the Russian language and can be downloaded.

As agreed with the WTO Secretariat, the last three WTO brochures in Russian will be available for a wide range of Russian speaking visitors of the WTO main Web Site through the link from the WTO main Web Site to the Web Site of the MFTI.

The Project has also assisted the MFTI in developing a brochure on the services provided by the WTO Information Center of the MFTI and types of information available at the Center and Internet resources of the Ministry.

In order to avoid duplication relating to investment issues, the MFTI Web Site has established a link to the Kyrgyz Republic Development Gateway – the Web Site maintained by the State Committee of the Kyrgyz Republic on Foreign Investments and Economic Development. The web site is in English, Russian, and Kyrgyz (at present, the Kyrgyz version is under development). It contains the basic Kyrgyz laws and codes relating to investments: Law on Foreign Investments, Law on Free Economic Zones, Law on Corporation and Partnerships, Law on Registration of Legal Entities, Law on Licensing, Tax Code of the Kyrgyz Republic, Bankruptcy Law, Mortgage Law, Law on Certification of Goods and Services, and Law on Securities Market. There is also a category named “Investment Climate of the Kyrgyz Republic”, which includes data on investment projects, statistics, bilateral investment treaties, description of activity of free economic zones, tax incentives stipulated by the Tax Code of the Kyrgyz Republic, types of taxes, customs privileges, and practical recommendations on how to protect investor’s rights.

6. Update the “Evaluation of Trade and Investment Climate in Kazakhstan.”

The Project completely updated this Evaluation, composed in February 1998 and not updated until now. Main areas requiring substantial update were:

- Legal and regulatory factors (assessment of foreign trade laws, law on acquisition and transfer of rights to state-owned property, tendering law, petroleum and subsurface laws, administrative law);
- Trade factors (including policies affecting trade on goods and services, current trade policies, and WTO status);
- Customs regime;
- Intellectual Property regime.

7. Develop the “Evaluation of Trade and Investment Climate in the Kyrgyz Republic.” A component of this requirement will be a regional initiative in Osh, the Kyrgyz Republic. The Contractor shall conduct the following: (1) a study in each region to identify current legal and administrative barriers to investment. Work with local government officials in order to amend existing laws and regulations, introduce new procedures and practices and promote a pro-investment climate. Also, develop information for distribution to the public, particularly geared to small- and medium-sized enterprises; so as to educate managers about the laws and regulations. (2) Collect the basic legal forms and applications and draft plain-English guides for foreign investors on relevant trade and investment legislation regarding each region. Develop a database of all relevant trade and investment legislation. (3) Provide training to local government officials in each region, as well as to managers of small- and medium-sized businesses. Training will include such things as customs rules, standards and certification procedures and intellectual property rights.

In late August, USAID Bishkek and Almaty advised the Project that this deliverable needed to be interpreted in a manner consistent with the coming on line of the new USAID Small and Medium Enterprise Development Project in the Central Asia Republics, implemented by the Pragma Corporation

(the SME Project). Thus, the Project began discussions with USAID on this interpretation, developed proposals, and participated with USAID and Pragma in an Osh visit. On 14 November, at the direction of USAID, the attached memorandum was submitted to USAID. In pertinent part, this memorandum stated that the Project would:

- focus its participation on identifying and compiling actual restraints on regional trade experienced by Osh SMEs and apply BAH's experience, expertise, and relationships toward rectifying specific trade problems;
- collaborate with the Pragma Corporation, in particular through participation in the assessments of specific SMEs conducted by Pragma in the Osh region.
- collect, evaluate and transmit information acquired to BAH personnel in Bishkek to facilitate possible resolution of actual restraints experienced.
- examine the need for training on regional trade matters (e.g., education of Osh-region SME officials on regional trade matters), and provide such training where necessary. Such training may take several different approaches:
 - (1) Basic training on regional trade, customs, WTO rights, and other issues within BAH's experience and expertise;
 - (2) Secondary training for government officials, border guards, owners of SMEs with substantial regional trade history, etc;
 - (3) Seminar for local government officials and SMEs regarding restraints on trade identified, possible or actual resolutions, and ways to reduce in future.

In discussions with USAID in December, this interpretation was further refined to focus on a series of seminars in Osh addressing issues of regional trade for SMEs.

The Project conducted a study on the legal and administrative barriers to regional trade for Osh region SMEs within the context of the general national level and specific local level barriers. As indicated above, one of the major problems indicated by businesses was lack of information on trade and investment matters. Educational and training activities of the Project were designed according to the inquiries made by businesses, and included a number of seminars conducted in Osh, dedicated to the representatives of small and medium businesses and local government officials. The seminars were organized in close cooperation with the Osh oblast administration, USAID SME Project/Pragma Corporation and UNDP Osh Regional Small Business Center.

The seminars regularly drew crowd representing over 30 SMEs, plus local officials. The following topics were covered by the seminars: regional trade basics, simplification of customs clearance procedures, import tariff policies, customs valuation, transit, standards and certification procedures, application of taxes on imports and exports, issues on trade with the Russian Federation, and business implications of the WTO membership of the Kyrgyz Republic. The participants showed their notable increased enthusiasm as series of the seminars were under way. The analysis of evaluation forms, completed by the participants after each event, showed that most of them found such training and education very useful and that they would be interested in participating in such seminars in future.

Five substantive reports on the seminars, and one report on the Osh Regions SME Survey, were completed. Copies of the collection of reports have been printed and distributed to interested parties in the Kyrgyz Republic as a reference tool.

8. Develop databases of all relevant trade and investment legislation and train local and regional government officials.

Kazakhstan

Several small enterprises in Kazakhstan offer such databases on a commercial basis; thus, establishment of a separate database arguably would compete with such commercial providers.

In essence, the Project helped develop a free legal database in any regard through its development of several trade and investment websites containing relevant legislation. The Project helped to develop a trade website at the Ministry of Economy that includes foreign trade and investment legislation, as well as sections on Trade Policy, Trade Statistics, WTO Accession, Industry, Agriculture, SMEs, and Customs.

The Project also sought to assist Kazinvest in the updating and maintenance of its website, which includes investment-related legislation. Our offers were rejected.

The Project also established a website specifically for trade and investment issues relevant to small and medium enterprises: this website contains the “Rights of Small Business in the Republic of Kazakhstan” which has all relevant trade and investment legislation to SMEs and other relevant trade and investment legislation.

The Project continued to be responsible for the maintenance and updating of this website through October 2000; in addition, the Project made updated copies of the Guide on CD for USAID on request for distribution.

In October 2000, USAID decided to hand responsibility for this website over to a small commercial operation in Kazakhstan. Thus, the Project provided the commercial operation assistance in establishing the website at its new URL location, including all the substance that the Project had developed for the site.

Kyrgyz Republic

The State Committee of the Kyrgyz Republic on Foreign Investments and Economic Development has a website that the Project has helped to keep current and complete. The website is in English, Russian, and Kyrgyz (at present, the Kyrgyz version is under development). It contains the basic Kyrgyz laws and codes relating to investments: Law on Foreign Investments, Law on Free Economic Zones, Law on Corporation and Partnerships, Law on Registration of Legal Entities, Law on Licensing, Tax Code of the Kyrgyz Republic, Bankruptcy Law, Mortgage Law, Law on Certification of Goods and Services, and Law on Securities Market. There is also a category named “Investment Climate of the Kyrgyz Republic,” which includes data on investment projects, statistics, bilateral investment treaties, description of activity of free economic zones, tax incentives stipulated by the Tax Code of the Kyrgyz Republic, types of taxes, customs privileges, and practical recommendations on how to protect investor’s rights.

B. Customs

Please see Individual Kazakhstan Customs Deliverables Report starting on page 29, and Individual Kyrgyz Republic Customs Deliverables Report starting on page 37.

C: Education and Information Technology

- 1. Develop educational materials (e.g. articles, brochures, etc.) and conduct seminars to educate the business community and government officials about the recently enacted laws in the areas of intellectual property, government procurement, anti-dumping, countervailing duties and safeguards.**

Kazakhstan/Kyrgyz Republic/Uzbekistan

The Project worked with the GOK during this period both to develop educational materials and conduct seminars to educate the business community and government officials.

- In the area of Intellectual Property, the Project conducted seminars in several countries, including Kazakhstan and Uzbekistan. Chief among the seminars was one organized in August 2000 with the Copyright Committee of the Kazakhstan Ministry of Justice in Petropavlosk on regarding legal developments, including the need for regulations on enforcement; another held in Aktyubinsk, Kazakhstan in November 2000, again with enforcement and WTO obligations as its main focus; and one in May 2000 in Tashkent on Rights, Protection and Enforcement in Conditions of Transition.
- In addition, Project staff in Kazakhstan and the Kyrgyz Republic continued working with government officials in their administration of new IPR laws and regulations, as well as continued drafting of new laws (on Commercial Secrets, Integrated Microcircuits) and regulations (enforcement) in Kazakhstan.
- The Project also provided substantive training and education in the area of antidumping, countervailing duties, and safeguards. Several seminars were held in Kazakhstan to train government officials on the technical aspects of administering the new AD/CVD law in Kazakhstan. The Project organized a seminar in October 2000 with two experts from the United States Department of Commerce, who provided a three-day seminar on anti-dumping duty methodology and calculations for approximately 25 officials at the Ministry of Energy, Industry, and Trade, as well as several businesses representing several industries (mining, steel). The Project assisted in the development and distribution of reference materials at the seminar.
- In November 2000, the Project brought its Senior WTO Advisor in Geneva to Astana to hold several days of training with Ministry of Economy officials on safeguards measures and Kazakhstan's application of its new safeguards law.
- The Project also organized a seminar on injury determinations in AD, CVD, and safeguards proceedings in March 2001, and provided for a well-known, private-sector trade attorney from Washington to spend several days in Astana training Kazakhstan Ministry officials and business representatives on this technical aspect of the law. The Project assisted in the development and distribution of associated reference materials.

- A seminar on procedures of Antidumping and Countervailing investigations was conducted in the Kyrgyz Republic in May 2001 for the officials of the Ministry of Foreign Trade and Industry and of the Antimonopoly Committee, and for several business representatives. These agencies are responsible for implementing the Kyrgyz anti-dumping and countervailing legislation. The Speakers were Mr. John McNerney, Chief Counsel for Import Administration of the US Department of Commerce and Mr. Ake Linden, Senior WTO Advisor of the USAID Trade and Investment Project. Mr. McNerney shared with his experience gained in Import Administration, the main body conducting anti-dumping investigations against imports into the United States.
- In addition, training conducted in May 2001 on the WTO Dispute Settlement System (See D.4, below) had a strong focus on substantive and procedural antidumping and countervailing issues within the dispute settlement framework.
- A Guide on Anti-Dumping, Countervailing and Safeguards investigations was prepared for businesses and the governments in both countries. It gives general information about dumping and countervailing, and about measures that affected industries can take against them. It explains the legal background to trade remedies, how to apply for an investigation, the conduct of an investigation, and what action will be taken afterwards.
- The Project also developed and distributed several official WTO brochures. “The WTO in brief”, “10 common misunderstandings about the WTO”, and “10 Benefits of the WTO”, which provide the general information on the WTO, were translated into the Russian language. Hard copies were printed and distributed to government officials and business representatives, and now can be downloaded from the Internet.
- As part of its Osh initiative in the Kyrgyz Republic, the Project compiled its reports on the five seminars delivered (Regional Trade, WTO Introduction, Tax and Customs, Trading with Russia, and Regional Investment) and its SME survey and distributed copies to interested government officials, business representatives, and the international community.

D. Accession and Post Accession to the WTO: Process

1. Advise on the structure and organization of the Government of Kazakhstan’s WTO Oversight Body.

Kazakhstan’s Inter-Ministerial Commission was established several years ago, with Project assistance. During the relevant time period, the Project lent assistance to the organization of its work through September 2000, including serving as a liaison between the WTO Secretariat and the Chairman of the Commission, former Deputy Prime Minister Utambayev. The Project encouraged the Chairman (through intermediaries) to respond to communications from the WTO and to fulfill information requests from the Chair of Kazakhstan’s Working Party in Geneva.

Further attempts to assist in such matters were rejected by the GOK, as it became increasingly withdrawn on WTO matters. With the appointment of new Deputy Prime Minister Jendosov as Chairman in January, the Commission was completely reorganized. It currently consists of The Chair; the Deputy Chair, the Minister of Economy and Trade; vice-ministers from various interested ministries (Justice, Transportation, Agriculture, Energy and Industry, etc.) and the national bank.

2. Assist in developing liaison functions among the Government ministries and agencies and the relevant committees of the WTO.

Kazakhstan

Given the GOK's reluctance to accept WTO assistance during the relevant period, it was difficult to serve in this capacity in the normal sense (i.e., as the Project was able to do in the Kyrgyz Republic). The Project did regularly encourage GOK officials to make direct contact with WTO officials, most recently (and dramatically) when it encouraged high-ranking officials at the Ministry of Economy and the President's office to seek guidance from the WTO Accessions Division on the timing of its Working Party meetings.

Perhaps the biggest success in this area was that the Project established a direct line of communication between the President's office and the Head of the WTO Accessions Division.

Also, the Head of WTO accessions for the United States government credited the liaison and advocacy efforts on behalf of the GOK with the United States and the WTO with resurrecting a dormant accession and securing Kazakhstan its first Working Party Meeting since October 1998.

Otherwise, the Project actively pursued liaison functions itself (as encouraged by GOK officials), ensuring that both the WTO Accessions Division and the GOK knew what the other was thinking and doing. Unfortunately, as this was for some time the only objective conduit for information between the two parties, certain parties within the GOK were not receptive to the messages being relayed by the Project from Geneva, and tended to blame the Project as messenger. The Project therefore encouraged both parties to communicate directly and openly as much as possible.

The Project also attempted to serve this same role in the GOK's relations with the United States Trade Representative's Office in Geneva, the European Union, Japan, and other delegations, but encountered the same problems noted above. After much encouragement from the Project to USTR speak directly to the GOK, USTR arranged for the drafting of a critical and detailed diplomatic note on Kazakhstan's WTO accession status, which was delivered by the U.S. Ambassador to the Deputy Prime Minister in January 2001.

Kyrgyz Republic

The Project assisted the ministries and agencies of the Kyrgyz Republic to communicate with the relevant WTO committees as needed. Particularly, liaison functions have been developed with the WTO Committee on Anti-Dumping Practices, Committee on Regional Trade Agreements, Technical Cooperation and Training Division, Statistics and Information Systems Division, Accession Working Parties, and Dispute Settlement Body.

The Project organized meetings between the MFTI and the WTO Technical Cooperation and Training Division, as a result of which close cooperation has been established, and joint GOK-WTO Secretariat work on conducting a Regional WTO Conference in the Kyrgyz Republic is being carried out. Representatives from member countries of the Organization for Economic Cooperation, which includes Azerbaijan, Iran, Kazakhstan, the Kyrgyz Republic, Pakistan, Uzbekistan, Turkey, Turkmenistan, Tajikistan, will participate in this significant event.

A WTO Appellate Body Secretariat Officer was invited to the Kyrgyz Republic by the Project and personal contacts were set with various officials from the Kyrgyz Government. The WTO Secretariat Officer expressed her readiness to meet requests for information and advice from the Kyrgyz Government.

The Project also established contacts between with various members of the WTO Committee On Regional Trade Agreements and the MFTI. The Committee held several sets of bilateral meetings that helped the Kyrgyz Government in WTO compliance and review of its free trade area and customs union arrangements.

The Project introduced Mr. Edil Kalashev, the representative of the MFTI at the WTO in Geneva, to various officials in the WTO Secretariat as well as in the International Trade Center established jointly by the WTO and UNCTAD.

3. Assist in establishing and enhancing a WTO Research Library/Research Center within the Kazakhstan Ministry of Energy, Industry and Trade.

Throughout the relevant period, the Project assisted the Ministry of Economy and Trade (as the main focus point for WTO matters, the proper Ministry for such assistance) to organize and absorb the wealth of WTO information/documents it was and is receiving on a daily basis: the Ministry was simply stacking documents received on the floor, on top of bookshelves, etc.

Project staff helped to organize materials and attempted for months to lend assistance in establishing a proper WTO Library. As reported to USAID, the Project made repeated oral and written offers/requests at various levels (including to the Minister of Economy and Trade, as did USAID), but the offer was not accepted. The Ministry claimed it had no space for such a library, and did not want such a library established elsewhere.

4. Provide WTO education and training for WTO officials responsible for carrying out WTO obligations and requirements.

Throughout the relevant period, Project staff provided WTO education to government officials in both countries on an *ad hoc* basis in all WTO areas. Specific WTO and WTO-related training events in both countries are detailed below.

Kazakhstan

Project education and training for government officials in the specific WTO areas of intellectual property, anti-dumping, countervailing duties, and safeguards is detailed in section C.1 above.

The Project provided several additional WTO training exercises during the relevant period.

- The Project enabled a Ministry of Economy official to travel to Moscow in May 2000 for a World Bank-training exercise on WTO matters.
- The Project provided for two Kazakhstan Members of Parliament to receive training in WTO matters in November 2000 at a seminar presently by the United Nations Development Project

(UNDP) in the Kyrgyz Republic, with the assistance of the USAID Trade and Investment Project in the Kyrgyz Republic.

- The Project provided a two-day seminar in December to several new officials of the Ministries of Economy and Justice introducing basic WTO concepts and more-specific accession requirements.
- In January 2001, the Project arranged and delivered major training in the area of WTO negotiations, designed to train Kazakhstan's WTO negotiators on highly-complex and critical goods and services negotiations. The training provided (an entire week) was of the highest quality available in the world (specifically recommended by the WTO Secretariat), and was presented by a former official of the WTO Accessions Committee (who maintains very close professional contacts with her former colleagues there), and the foremost expert in WTO negotiations available. Approximately 12 Kazakhstani officials from a range of Ministries (including Agriculture, Justice, and Communications) involved in the WTO accession process participated and received excellent background and hands-on negotiation training.
- At the Ministry's request, the Project agreed to send a Ministry of Economy official to Geneva and Turin for UNCTAD training on WTO and economic issues, but in the end her travel was not approved by the Ministry

The Project made many additional offers for WTO training and education, including personal training for the Vice Minister-in-waiting (who admitted no WTO knowledge), specific training and assistance from experts on the preparation of goods and services offers, etc., but all training was rejected. Overtures were made as high as to the Deputy Prime Minister, to no avail.

Kyrgyz Republic

Educational and training activities for both officials from the ministries and agencies and members of the Parliament were aimed at stressing the roles of each in administering of a relevant WTO agreement and their rights and obligations.

- A week seminar, from March 12 to March 16, 2001 on understanding the WTO Agreements for government officials from various ministries and agencies responsible for implementation of the WTO Agreements, was organized and conducted by the Project staff at the Conference room of the Ministry of External Trade and Industry of the Kyrgyz Republic. In addition to the briefing on general principles of the multilateral trading system and structure of the WTO and its agreements, the objective of this seminar was to explain, in detail, mechanics of various specific WTO agreements. The Kyrgyz Republic gave particular attention to the issues of implementation of the commitments, problems arising in the course of implementation, notification requirements on the agreements, and coordination of activities of the ministries and agencies in relation to the WTO issues.
- The following specific topics were presented to the participants: GATT 1994, GATS, TRIMS, Agreement on Implementation of Article VI of GATT 1994, Agreement on Subsidies and Countervailing Measures, Agreement on Safeguards, Regional Trade Agreements, Quantitative Restrictions and Non-Tariff Barriers to Trade, State Trading Enterprises, Agreement on Import Licensing, and Agreement on Government Procurement. The participants were also briefed on the evolution of the agreements and subjects added to the WTO work program for study and analyses.

- Jointly with the UNDP Office in Bishkek, the Project organized training on the benefits of the WTO accession for the Kyrgyz Republic for the newly-elected Parliament members. Twenty-five members of both chambers of the Kyrgyz Parliament and staff members took part in this three-day event, November 1-3. Particular focus was on the role of legislature in multilateral trade negotiations within the framework of the WTO system.
- Jointly with the Ministry of Foreign Affairs and the Ministry of Foreign Trade and Industry, the Project organized a Round-Table on the Realization of WTO Benefits, which was held on April 20, 2001 at the Hotel Pinara in Bishkek. Government officials, representatives of business and donor communities participated at the event. The training/educational exercise was designed to address issues related to the Kyrgyz Republic's membership in the WTO, especially with respect to small and medium business enterprises. An important issue addressed was raising awareness in the government and the business community regarding the main reason for WTO membership: to ensure predictable and growing access to foreign markets for Kyrgyz goods and services.
- In May 2001, the Project conducted training on the WTO Dispute Settlement System. This two-day seminar addressed the importance of the WTO dispute settlement system as a central element in providing security and predictability to the multilateral trading system. The seminar was directed at lawyers and legal advisors from 23 different ministries and agencies responsible for implementing the WTO Agreement in the Kyrgyz Republic, representatives of chambers of commerce, and other business associations. The Speakers were Mr. Ake Linden, the USAID Trade and Investment Project's Senior WTO Advisor, Mr. John McInerney, Chief Counsel for Import Administration of US Department of Commerce, and Ms. Stephanie Cartier, Legal Officer of the WTO Appellate Body Secretariat. The seminar discussed principles of the Dispute Settlement System, the panel process, appeals, implementing dispute decisions, as well as the functioning of the system in practice through case studies.

5. Assist both governments' WTO Oversight Body and relevant ministries/agencies in meeting WTO reporting and notification obligations.

Kazakhstan

As noted, in Kazakhstan the Project was hampered in its assistance by the GOK's ever-deepening reluctance to cooperate with the Project on its accessions submissions, citing its impression that the process is highly confidential.

However, although the Project was not allowed to assist substantively in the development of the GOK's offers on good and services, the Project struck a sort of compromise (and did lend assistance) through the subcontracting of local consultant KERA company and Ms. Farah Usmanova. Ms. Usmanova, former head of the WTO Affairs Department at the Ministry of Economy, provided direct assistance on Kazakhstan's revision of its offers on goods and services to the WTO Interministerial Commission, the relevant ministries and agencies, and the Deputy Prime Minister. As a direct result, Kazakhstan submitted revised offers to the WTO in April 2001, and earned a Working Party meeting in July 2001 (its first since October 1998).

On other submissions the GOK allowed only a modicum of substantive review and comment, usually with suspicion and negativity. Thus, the Project was not able to maximize the assistance to the GOK that it could have if the GOK were welcoming of assistance.

Nevertheless, the Project did its best to assist the GOK in improving the quality of the documents it submitted to the WTO, and, where allowed, provided research and translation assistance for eventual submissions. This assistance included:

- In July and August 2000, Project staff assisted in the research, drafting, and translation of several major accession submissions (totaling hundreds of pages) to the WTO Secretariat. These included:
 - WTO/ACC/8 (Technical Barriers to Trade (TBT). Sanitary and Phytosanitary Measures (SPS));
 - WTO/ACC/9 (Trade Related Aspects of Intellectual Property Rights (TRIPS));
 - further documentation on Trade Related Investment Measures (TRIMS);
 - a memorandum on proposed transitional arrangements.
- To assist in the revision of Kazakhstan's revised offers, Project staff performed calculations of the Average Import Prices in certain breakdowns of the Harmonized System of goods nomenclature. The information was used in the determination of the import duty levels contained within Kazakhstan's revised goods offer. The final product of these calculations was over 1500 pages, which we provided to the Ministry in both printed and disc format. In related areas, we translated a lengthy (100+ pages) WTO document regarding the accessions experience of 12 recent members, and delivered printed and disc copies to Ministry.
- While offers of substantive assistance on developing Kazakhstan's offers on goods and services was repeatedly rejected, four members of the Project staff worked long hours translating Kazakhstan's offer on services, submitted to the WTO in April.
- In a related area, we translated a lengthy (100+ pages) WTO document regarding the accessions experience of 12 recently-acceding members for the Commission.
- We also provided the WTO Interministerial Committee with requested materials (binders, paper, etc.) to support its regular meetings, and its special meetings regarding revision of offers on goods and services.
- Project staff helped re-research, rewrite, and translate a memorandum updating Kazakhstan's economic and trade regime; the last information submitted to the WTO was in 1998. After much wrangling with Ministry of Economy staff to improve the content and accuracy of the document, it was submitted to the WTO Secretariat in January 2001.
- Project staff assisted in the drafting of a memorandum updating the consistency of Kazakhstan's legislation with WTO requirements, as well as a "synoptic table" indicating the anticipated schedule for further progress in legislation. Both were submitted to the WTO in April 2000. Staff also assisted in answering questions to the documents from the head of the WTO Accessions Division.

Kyrgyz Republic

The team continued to assist various government agencies and ministries in meeting the notification obligations pertaining to the requirements of the various WTO agreements. For the period from April 2000 to May 2001, 29 notifications were submitted to the WTO Central Registry of Notifications, and the Project worked closely with the government in drafting these documents.

- The main area of WTO notification assistance provided to the Government of the Kyrgyz Republic was the WTO review of its free trade area and customs union agreements. The Project staff assisted the Kyrgyz Government in preparing extensive submissions to the WTO in order to facilitate the review of the free trade and customs union arrangements of the Kyrgyz Republic by the WTO Committee on Regional Trade Agreements (CRTA). The Project supported the Kyrgyz delegation during the meetings of the CRTA, as well as in preparation of replies to written questions submitted by the members of the committee following the meetings.
- Assistance was also provided during the regular meetings of the Customs Union where coordination of activities by the Members in relation to their WTO accession was discussed.
- The Project assisted the Kyrgyz Government during the review by the WTO Committee on Anti-Dumping practices of the Kyrgyz Law on Anti-Dumping. Project staff helped to prepare replies to several sets of questions posed by some members of the Committee. In order to implement the statements made in the replies to the questions, staff helped to prepare amendments to the Draft Regulations implementing the Laws on Anti-Dumping and Subsidies and Countervailing Measures.
- The Project also assisted the MFTI in preparing replies to the WTO questionnaire on the technical assistance needs of the Kyrgyz Republic in the area of trade for the period of 2001 – 2003. The questionnaire required information on any specific type of technical assistance required, specific objectives on the WTO implementation issues, participation in the multilateral trading system, and understanding of the WTO agreements and access to information on the WTO issues. The WTO Secretariat will schedule any of its technical assistance activities based on the submission. Since the WTO Secretariat has limited technical assistance resources, the needs of the Kyrgyz Republic were indicated according to priorities.
- The team assisted the Government of the Kyrgyz Republic in the preparation of the notifications pertaining to the requirements of:
 - Article XXIV:5 of General Agreement on Tariffs and Trade 1994;
 - Article 7.3 of the Agreement on Import Licensing Procedures;
 - Article III:3 of the General Agreement on Trade in Services;
 - Article 63.2 and 69 of the Agreement on Trade Related Intellectual Property Rights;

- Paragraphs J and C of the Code on Good Practice of the Agreement on Technical Barriers to Trade;
- Article 25.11 of the Agreement on Subsidies and Countervailing Measures;
- Article 16.4 of the Agreement on Implementation of Article VI of GATT 1994;
- Decision on Notification Requirements for Quantitative Restrictions adopted by the Council for Trade in Goods on December 1, 1995;
- Article XXVIII:1 of GATT 1994

6. Assist in developing and/or amending WTO-related legislation.

Kazakhstan

The Project worked with various agencies, ministries, and Parliament throughout the year to further WTO-related legislation. The Project also assisted in other legal areas. Of particular importance are the remaining laws necessary to ensure Kazakhstan's conformity with WTO principles protecting intellectual property rights. Major areas of legislative work were:

▪ Draft Law on Commercial Secrets

The Project worked on this draft law, necessary to implement aspects of the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS), directly with the main drafter, the Agency on Regulation of Natural Monopolies, Protection of Competition and Support of Small Business, as well as Parliament. Staff lawyers and the Project's Intellectual Property Advisor prepared the draft law consistent with WTO requirements.

By the GOK Resolution of 25 July 2000, this draft law submitted to Parliament. The draft was then sent to Committee.

The Project helped to establish and participated in a Working Group in Parliament of interested agency, ministry, and Parliament representatives to advance the work of the draft law. Various forces in the Working Group argued for a complete redrafting of the law, which the Project opposed. Finally, due to the highly-technical nature of the draft, the Working group sent the draft to the Legislative Institute of the Ministry of Justice expert scientific review. This review stalled at the Ministry until April 2001

In April, the Institute opined that the draft as fine and needed only "polishing work." The law is scheduled to be presented to Parliament for passage on 21 November 2001.

▪ Draft Law on Legal Protection of Layout Designs of Integrated Microcircuits

Project staff worked closely with the Patent Office on this draft law, also necessary for TRIPS conformity. During 2000 the staff worked on the draft of this law, and also prepared a detailed analysis for the Patent Office and Parliament concerning its conformity to the requirements of the TRIPS

Agreement. In accordance with the GOK Resolution of 13 December 2000 the draft law was forwarded for consideration to the Mazhilis of the Parliament.

Late in April 2001 the draft was approved at the plenary meeting of the Mazhilis and forwarded for review to the Senate. In May 2001, Working Group Meetings took place, with Project involvement. On May 24, 2001 an extended plenary meeting of the Senate of the Parliament was held, at which Senators introduced a number of technical amendments to the draft and forwarded it for agreement to the Mazhilis.

▪ **Draft Regulations on Border Enforcement of IPR**

The enforcement provisions of the TRIPS agreement require member countries to adopt “border measures” for the protection of IPR. It is based on the recognition of the importance of customs bodies in the fight against trade in pirated copyright works and counterfeit trademarks. The procedure is to permit owners of IPR to apply to Customs to suspend the release of goods suspected of violating IPR pending judicial determination.

Kazakhstan, with Project assistance, amended its Customs Code in July 1999 to provide the authority to implement a border measures system. In August 2000, again with Project assistance, the Customs Committee started to draft border enforcement regulations, and the Project assisted to establish an interministerial Working Group. The Working Group includes representatives of the Ministry of State Revenue (Customs), the Copyright Committee of the Ministry of Justice, the Patent Office, the Ministry of Finance, etc.

In recent months, the draft regulations have been stuck at the Customs Committee. In April, the Project drafted a letter for signature by the Speaker of Parliament to the Prime Minister asking for assistance in moving the draft along. The Prime Minister has pledged to do so, but currently we have no timeframe prognosis.

There is also an ongoing effort by the Commonwealth of Independent States (CIS) to draft CIS border enforcement rules. Project staff advised the Government of The Kyrgyz Republic in this regard (See Section C.7).

▪ **Draft Law “On Veterinary Matters”**

The Project also worked extensively on the draft law “On Veterinary” designed to bring laws regarding animal health standards into line with the requirements of the WTO Agreement on Sanitary and Phyto-Sanitary Measures (SPS Agreement). The agency responsible is the Department of Veterinary Matters of the Ministry of Agriculture. First, Project staff assisted in the drafting of critical amendments and additions to be included into a Presidential Decree having the force of Law; however, in August 2000 the GOK decided to draft an entirely new law instead.

Project staff worked closely in all stages of drafting, and worked with Parliament to explain the need for changes. The draft law was submitted to Parliament for consideration on 2 February 2001.

The Project assisted in the establishment of a Working Group within Parliament. Certain Deputies in the Mazhilis disagreed with the proposed independent structure of the state veterinary body specified in the draft law (the SPS Agreement requires the state veterinary service to be independent from certain political pressures, particularly where animal-borne diseases are concerned). To further transparency, Project staff

urged like-minded Parliamentarians publish the draft law for public comment: in April 2001 the draft was published in the newspaper “Kazakhstanskaya Pravda.”

This draft law currently is being considered in the Parliaments.

- **Amendments to Law on Plant Quarantine**

Project staff also worked on SPS Agreement-required amendments to the Law on Plant Quarantine, the companion law for plant life standards. After conducting an analysis of the existing law’s conformity to SPS requirements, staff worked closely with the Ministry of Agriculture to draft necessary amendments and additions to the Law. Project staff helped to establish, and participated in, a Parliamentary Working Group. Parliament sent the amendments to the Ministry of Justice for some changes, and the draft then went to the GOK. In May, the GOK returned the draft to the Ministry of Justice for additional changes.

The drafts intend to add provisions required by the SPS Agreement such as proper risk assessments, certifications, and informational requirements (such as an “inquiry point” for interested party questions in this area).

- **Amendments to Law on Licensing**

Project staff worked on several minor amendments to the Law on licensing to ensure it remained in conformity with WTO requirements.

- **Other**

The Project assisted the GOK to become a signatory to the Convention on Protection of the Interests of Phonogram Producers from Unauthorized Reproduction of their Phonograms (Geneva Phonograms Convention), and to draft a law that made the protections therein the law of Kazakhstan. The President signed the law on 7 June 2000.

For nearly a year, the Project urged the GOK to submit its ratification documents to the United Nations in New York for deposit (under the terms of the Convention, signatories are not members until three month after their documents are deposited). The Ministry of Foreign Affairs gave the Project and others the proverbial run-around on this simple procedural act. Finally, the Project ghost-wrote a letter to the Prime Minister, which was signed and submitted by the Deputy of the Mazhilis of the Parliament. As a direct result, on 16 April the Ministry sent the documents to New York for deposit.

Kyrgyz Republic

The Project assisted the MFTI in drafting two regulations implementing the laws on Anti-Dumping, on Subsidies and Countervailing Measures, and on Safeguards, as well as assisted the Ministry through the entire process of review and approval by the interested ministries, agencies, and the Cabinet of Ministers. This work included reviewing comments submitted by various ministries, holding meetings, and replying to the questions of the Cabinet of Ministers. The Regulation On the Procedures for Conducting Investigations Prior to the Introduction of Anti-Dumping and Countervailing Measures and the Regulation On the Procedures for Conducting Investigations Prior to the Introduction of Safeguards were enacted by Resolution of the Cabinet of Ministers on January 11, 2001.

The Project assisted the Kyrgyz Government in meeting WTO requests for information and advice related to the WTO implications of the Kyrgyz Republic trade laws. The following laws, regulations and draft international agreements were reviewed for their WTO consistency:

- Regulation of the Government of the Kyrgyz Republic No 711 On the Entry of Foreign Road Carriers into the Territory of the Kyrgyz Republic, of December 20, 1999;
- The draft Protocol between the Governments of the countries of the Customs Union (CU) concerning the introduction of exceptions to the MFN in trade with non-members;
- The draft Protocol on Finalizing the Establishment of the Free Trade Zone Between the Governments of the CU countries;
- Resolution No 2 of the Chief State Sanitary Officer of the Kyrgyz Republic on the monitoring of imported products into the Kyrgyz Republic;
- The draft Agreement on Carrying out Coordinated Antimonopoly Policy within the framework of the Customs Union;
- The draft Regulation on Cooperation between the CIS countries in Prevention of Monopolistic Activities and Unfair Competition;
- The draft Regulation on Intergovernmental Council for Antimonopoly Activities;
- The Decision of the Council of Heads of Governments on Measures for Implementation of the Agreement on the Creation of Favorable Conditions for Small Enterprises in the CU countries of November 24, 1998;
- The Decision on Measures to Harmonize the National Legislation of the CU Countries in Social and Humanitarian Areas;
- The draft Law of the Kyrgyz Republic on introducing amendments to the Customs Code;
- The draft Regulation on Customs Control of Intellectual Property Objects;
- The Agreement “Islamic Corporation for Private Sector Development”;
- The draft Protocol on Trade Preferences of the Kyrgyz Republic with Respect to the Least Developed Countries and Developing Countries within the CU Framework;
- The draft Agreement on Foundation of the Eurasian Union, draft statutes of the Eurasian Union;
- The draft Model Law on common principles of functioning of free trade zones;
- The draft Agreement on Measures for Control of Access of Goods and Services from Third Countries to the Markets of the CU members;

- The draft Law on Free Customs Zones;
- The draft Law on Competition.

7. Provide *ad hoc* troubleshooting advice.

Kazakhstan

- Throughout the year, advised the GOK generally and specifically on problems/issues with its WTO accession process, most thoroughly and critically after visiting Washington and Geneva in June/July 2000 to meet with USTR and WTO officials. Project staff provided such advice at all levels of government, from Ministry of Economy staff and department heads to Vice Ministers, the Minister, the Deputy Head of the Presidential Administration, and the Deputy Prime Minister.
- Throughout the year, the Project provided advice and assistance to the Antidumping Committee of the Ministry of Economy and Trade (after its transfer from the Ministry of Energy, Industry and Trade) on a variety of issues related to Kazakhstan's administration of its antidumping, countervailing duty, and safeguards laws in a manner consistent with the WTO. This included comparisons and contrasts with the laws of major players (in particular the United States and EU), assistance in office organization and responsibilities, technical advice on antidumping calculations, injury analyses, and various other aspects of these areas of trade law.
- The Project also provided extensive advice and assistance regarding several antidumping actions taken by the United States against Kazakhstani exports to the U.S. The Project prepared memoranda on the US practice of treating certain countries as nonmarket economies, advised the GOK on the applicable timelines and procedures involved with these proceedings, and translated extensive parts of the U.S. antidumping law for the GOK. Project staff took pains to keep any advice and assistance general (regarding procedures, etc.) and refused to advise the GOK on specific issues within the cases, or on strategy.
- Project staff identified an increasing number of safeguards actions being initiated by Kazakhstan against imports from its neighbors, in particular Russia, and conducted an analysis to ensure that the GOK was conducting these proceedings in a WTO-consistent manner (especially in the areas of import surges and injury).
- Project staff worked with the Ministry of Economy on research and information designed to help prepare for (and follow up to) several rounds of Customs Union/EEC talks during the relevant period, to ensure consistency with WTO requirements. This work included assisting in making economic assessments of various tariff levels on the Kazakhstan economy, collecting necessary economic information from the Bureau of Statistics, examining economic information of various countries to compare WTO accession methods.
- Staff economists worked on a series of reports requested by the Ministry regarding the positions of the developing country members at the Seattle Ministerial, special concessions granted to developing countries since (such as leeway in transitional periods for trade-related investment measures (TRIMS), and environmental and labor issues within the WTO.

- The Project obtained and translated a number of WTO-accession related documents for the Ministry of Economy, including the Agricultural schedules of the EU, Georgia, Albania, Lithuania, and Croatia, and a 100+ page WTO accessions document.
- At request of Ministry of Agriculture, conducted comparison of Kyrgyz Republic, Belarus, and Uzbekistan agricultural statistics and tariffs.
- Analyzed Georgia, Russia, Lithuania, and Estonia agricultural tariffs.
- Discussed general and specific agriculture issues with the Head of the Unit of Indirect Regulation, charged with WTO accession issues.
- Translated and provided to Ministry of Agriculture the UNCTAD document *Tools for Multilateral Negotiations On Agriculture*, an excellent introduction to WTO agriculture negotiations.
- Identified and analyzed the following documents for Ministry of Agriculture:
 - G/AG/NG/W/55 Special and differential treatment for developing countries IN world agricultural trade 10 November 2000;
 - G/AG/NG/W/54 WTO Negotiations on Agriculture "Market Access" 10 November 2000;
 - G/AG/NG/S/9 Special Agricultural Safeguards 6 June 2000;
 - G/AG/NG/4 Decision on measures concerning the possible negative effects of the reform program on least-developed and net food-importing developing countries {NFIDC Decision} 27 April 2000;
 - G/AG/NG/S/6/Rev.1 Agricultural trade performance by developing countries 1990-1999, 31 January 2001.
- The Project began development of a website for the Ministry of Agriculture regarding an “inquiry point,” as required by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)(which concerns safety of imports (plants, animals, etc.). We also received request from Ministry for further assistance with computers, etc. for this inquiry point, and asked them to quantify their request, but received no reply.
- Identified, analyzed, translated, and delivered relevant WTO documents regarding telecommunications (basic telecom commitments, spectrum/frequency management).
- Located and provided the services commitments of Jordan, Lithuania, Estonia, and Croatia.
- Discussed GOK’s intent to draft a “comprehensive trade law” with officials responsible. Translated for their consideration the Table of Contents of the U.S. Congress’s “Overview and Compilation of U.S. Trade Statutes," which itself runs 8 pages of small type.

- At the request of the Deputy Head of Presidential Administration, drafted a report on the status of Russia's WTO accession vis-à-vis Kazakhstan's.

Kyrgyz Republic

The Project team has been responding to ad-hoc inquiries of the MFTI regarding its trade policy initiatives. This activity include the following:

- Upon request by the MFTI, the team made an analysis of accession of China to the WTO and its legal consequences for the Kyrgyz Republic. How will accession of the powerful neighbor to the WTO affect its trade with the Kyrgyz Republic? Will the Kyrgyz Republic have to change its trade policy with respect to China? These and other questions were addressed in the analysis prepared by the Project staff.
- Upon request by the Antimonopoly Committee, advised its staff and representatives of the Kyrgyz cement industry on the issue of the anti-dumping investigation initiated by the Kazakh dumping authorities against imports from the Kyrgyz Republic. It was pointed out that the Kazakh Law on Anti-Dumping was drafted with the assistance of the Project, and is based on the WTO principles and rules and is similar to the Kyrgyz Law. Copies of the Kazakh Law and regulations were provided to the Kyrgyz officials.
- Met with an official from the Kyrgyz Republic and discussed the issue of a possibility of introducing a ban on imports of beef. The question asked was if the Kyrgyz Republic could introduce prohibition on imports of beef in order to avoid the entry of the infamous "mad cow" disease into the Kyrgyz Republic without breaching the WTO agreements. Although the WTO agreement does not prohibit the introduction of restrictions on imports for the purpose of protection of human life, flora and fauna, and health as such, it was pointed out that the application of such a measure should be justified under the relevant provisions of the TBT and SPS agreements and applied without arbitrary or unjustifiable discrimination among countries and notified promptly to the WTO Secretariat.
- Advised the Government on consistency of the proposed introduction of export prohibitions on scrap non-ferrous metals with the WTO requirements, as well as on ways of raising the rates of duty on electric transformers above the levels committed by the Kyrgyz Republic upon accession to the WTO.
- Advised the Kyrgyz Government on consistency of the draft agreement on measures to control access of third countries to the service markets of the countries of the Customs Union and the proposed model law on common principles of functioning of the free trade zones with the WTO requirements. These drafts were found to be in compliance with the requirements of the WTO Agreements.
- Upon request by the MFTI, reviewed the Order of the Cabinet of Ministers, of February 8, 2001, which introduced prohibition on exports of semi-processed sugar-beans. The Project staff provided comments with respect to the use of a proper form of a legislative document, as well as concerning its substance. It was pointed out that quantitative restrictions on exports might be introduced if justified under the provisions of Article XI of GATT 1994. For example, export prohibitions can be applied to prevent or relieve critical shortages of products essential to the exporting country. In this case "essentiality" of a product has to be explained, which was not the case with the Order.

E. Constituency Mobilization

Kazakhstan and the Kyrgyz Republic

The Project used media sources in order to make the public aware of the Project activities and its benefits for residents of the Kyrgyz Republic. This work was coordinated with the Press Service of the MFTI. Press release information was prepared and distributed on every event carried out by the Project. Both national and local TV and newspapers covered all the seminars and roundtables organized in Bishkek and Osh. Local TV Channels such as NBT, VOSST, and Pyramid, as well as such newspapers as Slovo Kyrgyz Republica and Vecherny Bishkek-Uyg were regular attendees. In most cases the Project's government counterparts, Project experts and a USAID representative gave interviews to the media. In addition, information on the WTO Round-Table in Bishkek was published on the MFTI Web-Site.

The project was not as successful in its constituency mobilization plan in Kazakhstan due to the reluctance and non-cooperation of the Ministry of Economy on any such efforts.

Individual Kazakhstan Customs Deliverables Section

III. Kazakhstan Customs Activities

- **Evaluate customs declaration and import and export procedures, and propose amendments to streamline and speed up customs processing,**
- **Recommend Revisions to customs implementing regulations and associated audit procedures.**

The following is the work delivered against the instant contract relative to Customs in Kazakhstan.

All key components of the revised work plan were met with the exception of item 3. “Assist the Kazakhstan Customs with the WCO Modernization Program.” This item in the work plan could not be achieved due to time restraints. The World Customs Organization was unable to provide this program to the Kazakhstan Customs within the project time period. In addition to the key elements contained in the work plan, the Trade and Investment Project has provide substantial assistance to the Government of Kazakhstan outside of the Customs Committee. Further, organized trade groups¹ outside of the GOK routinely rely upon the USAID Trade and Investment Project for technical advice on customs and tax related issues.

Progress has been made in many key areas of Customs reform. Regressive steps have also occurred. As an example of a step backwards, the valuation methodology in the Customs Code that is close to being WTO compliant now has an implementation order that further moves Kazakhstan further away from WTO valuation methodology². Many of the less savory aspects of the changes in Customs have been the result of activities initiated in the GOK by officials outside of Customs, specifically at the Ministry of Revenue. An example is the initiation of Order 959 that originated within the Ministry of Revenue that requires a \$200,000 cash deposit from all customs brokers. This Order, if implemented, would drive approximately three-fourths of the customs brokers out of business and create a monopolistic market for the large firms. Due in large part to the active participation of the USAID Trade and Investment Project with Customs and the trade community, Order 959 has not been implemented but remains a Damocles sword over the small Customs brokers.

A second dark cloud that has been on the horizon in Kazakhstan since 1999 is a government resolution for the reintroduction of a Pre-Shipment Inspection (PSI) contract for imports and exports. The GOK in June 2001 has now proceeded with the acceptance of bids for this service. The USAID Trade and Investment Project has recommended against this action. As an alternative we have recommended investment in Kazakhstan Customs. The final decision has not been reached as the GOK may reject all the proposals

¹ The primary trade related group that has been the beneficiary of technical advice is the American Chamber of Commerce in Kazakhstan. This has not been based on an American preferential but simply because the AmCham is the most active trade organization. The Trade and Investment Project is the only donor assistance specifically cited on the American Chamber of Commerce web site, <http://www.amcham.kz/eng/wgroups/customs/>. In addition, the Trade and Investment Project works on a routine basis with the Association of Businessmen and Entrepreneurs, the Kazakhstan Customs Brokers Association, the Foreign Investors Council under the President of Kazakhstan, and Association of Entrepreneurs' Rights Protection.

² *This new Order, Number 42, Registration number 1443 of March 30, 2001 was written during an unplanned, crash program initiated by the Minister of Revenue to reorganize the Customs regulations. A complete, detailed review for WTO non-compliance will take some time as the Order does not follow the organizational structure of the WTO regulations. If the GOK will comply with the request by the WTO for submission to the WTO for valuation legislation and regulations the WTO will provide comments back to Kazakhstan.*

but strong influencing factors would suggest that some form of privatized Customs valuation service would go forward.

A governmental institutional structure with a Ministry of Revenue independent and separate from the Ministry of Finance has proved problematic to reform. The objective of the Ministry of Revenue is to collect (make) money on behalf of the Government. An example is the creation of KedenTransService. This is a wholly owned government business that competes in the traditionally private support structure (Customs Brokerage, Warehousing) to international trade. At the same time this government owned company is responsible for the generation of revenues for the support of the Customs. It also functions as a business regulated by Customs and competing with private businesses also regulated by Customs. The potential problems with such a company, particularly in a society with systemic corruption are obvious.

The creation of a Ministry of Revenue created an unbalanced fiscal approach granting systematic guarantees to opportunities for corruption. Further complicating the reform of Customs is the internal structure of the Ministry of Revenue having tax officers report directly through an internal structure to the Minister and Customs having a separate structure reporting to the Head of the Customs Committee who is under the Minister of Revenue. Additionally certain Customs functional areas are currently within the ministerial structure rather than Customs. As an example, the Minister of Revenue has created a separate branch “Statistical Customs” that collects and analyzes Customs data with little interrelationship with Customs. Decisions on Customs issues, as in the case of Order 959 are made at the Ministerial level without the benefit of the institutional expertise within the Customs Committee.

The USAID Trade and Investment Project continues to be the lead in donor assistance to Kazakhstan Customs. The Customs Advisor has taken a very proactive role in coordination with other donor organizations including EU Tacis, ADB, World Bank, IMF, other US Direct Assistance under the Central Asia Border Security Initiative, Russian Federation Customs and other USAID projects.

The Trade and Investment Project during the previous task order developed a close relationship with the USAID Tax and Fiscal Reform Project in the Kyrgyz Republic for combined training to tax and customs officers in the Kyrgyz Republic. The importance of the interrelationship between tax and customs in a VAT environment can not be underrated. Proposals were initiated in this task order for developing a similar program for the joint delivery of training in Kazakhstan. Unfortunately the USAID Tax and Fiscal Reform Project in Astana does not have a VAT advisor in Kazakhstan and due to a change in personnel the T&F R advisor in Bishkek had left that project and could not come to Kazakhstan to participate in the proposed training. (The USAID Trade and Investment Project has used our internal VAT expert to proceed with this training.)

A second target of opportunity presented itself during the current task order for combining the expertise of the Trade and Investment Project with another USAID funded activity, the Financial Market and Social Protection Development Project. This resulted in a joint presentation to the trade community and the insurance industry on the development of the international practice of using customs bonds for the release of goods more quickly and efficiently at the time of importation. (The development of Customs Bonds is suggested as a future activity for development.)

Customs Deliverables

- 1. Provide advice, as needed, to the Customs Committees of Kazakhstan, and assist in performing day-to-day activities to ensure appropriate implementation of streamlined customs procedures.*

By mutual agreement between the USAID and the contractor the widest latitude has been given to this deliverable. The Customs Advisor in Kazakhstan has worked very closely with USAID in identifying “targets of opportunity” to assist the Customs in performing day to day activities. While the Scope of work only mentions the Customs as the recipient of the benefits of the USAID technical assistance, the

Trade and Investment Project has worked on a routine basis with other government agencies. These include direct assistance to the following:

Ministry of Revenue

Ministry of Finance

Ministry of Foreign Affairs

Ministry of the Economy

Anti Monopoly Agency under the Ministry of Justice³

National Bank of Kazakhstan

Parliament of Kazakhstan

Specific noteworthy activities achieved during this task order include the following:

- Web site development - After repeated attempts to develop an Astana Customs Committee based web site, a web site, <http://almaty.keden.kz/>, has been developed by the Almaty Customs House that is privately financed⁴. While the funding basis is questionable and the site is often down due to a lack of financing, information is available to the public at no cost. This now includes an English section including the Customs Code and many regulations and Government Orders translated into English by the USAID Trade and Investment Project. Further development of a web site will include the reorganized Customs Regulations that were released in June 2001 by Customs in both a book and CD format. These new regulations will be posted on a web site.
- Development of the Customs Advisory Council – Following the amended Kyoto Convention, the USAID Trade and Investment Project recommended to the Customs Committee the establishment of a formal advisory council from private industry. Customs established such a council that has participated in drafting new regulations. At times, due to the remoteness of Astana, the capital, from the business center of Kazakhstan, Almaty, the participation of the private industry has been low.
- Development of Public Information seminars – Again following the amended Kyoto Convention, the Trade and Investment Project has joined the Customs in developing formal training to the public. (See the training section for complete details.)
- Assistance in the development 6 papers by the American Chamber of Commerce – As a partner in change, the Trade and Investment Project Customs Advisor has provided technical reviews of 6 papers developed by the American Chamber of Commerce, Customs Working Group on Customs issues. These include:
 - humanitarian aid customs clearance guidelines
 - cost based user fees
 - import of household goods and personal effects
 - low value shipment clearance
 - pre-shipment inspection
 - transfer pricing
- Assistance in hosting a conference for the Customs Union Member States on customs requirements for joining the WTO and modernization programs – The USAID Trade and investment project presented 4 papers in this conference and one keynote presentation.
- Direct assistance to the Kazakhstan Customs Brokers Association – This included both training and technical recommendations to strengthen the quality of broker services.
- A detailed analysis of the justification under lying Order 959 by the Ministry of Revenue for the \$200,000 deposit by Customs Brokers – The Trade and Investment Project Customs Advisor did a

³ The full name is “Agency of Republic of Kazakhstan on Regulation of Natural Monopolies, Protection to Competitions and Support of Small Business

⁴ The Customs has been directed by the Ministry of Revenue that the Customs Committee will only have a web page in the Ministry of Revenue official web site. By some quirk of Kazakhstan regulation this does not restrict the individual Customs Houses from each having their own web site. This does leave a potential problem of conflicting information what will need to be resolved.

review of the letter responding to the American Chamber of Commerce justifying the need for a \$200,000 cash deposit by Customs Brokers. This study identified that the basis used misapplication of international principles and miscalculation of the customs duties and taxes.

- Establishing the basis for WTO Cost Based User Fees - Presentations to Parliament and to the Ministry of Revenue on the development of the WTO compliant cost or approximate cost based user fees for Customs have established a groundwork for this follow on work. The presentations included the establishment of the cost based user fees as an anti corruption measure.
 - Anti Corruption initiatives - Development and training to an internal security department within Customs to fight corruption was included in the day to day activities. This is the start for additional meaningful activities in the realm of anti corruption to active measurable results.
 - Regulatory development – The customs has now has an implementation order for preliminary decisions for the classification of merchandise under the tariff codes.
 - Modernization proposals – The Trade and Investment Project was invited by the Anti Monopoly and Protection of Small Business Agency to identify alternatives to Order 959. Following this request, a report on modifications to the Customs Code, Criminal Code and Administrative Violations Code to support changes was prepared. This report that has now been widely circulated in Government by the Foreign Investors Council. The report recommends further defining the role of Customs, Customs Brokers, Importers and Exporters in the trans-border trade process. This includes defining due diligence and realistic levels of culpability.
2. *Draft and recommend a “notice and comment” procedure for customs rule making in all three countries. This is a procedure by which Customs would be required to publish proposed rules in advance of their implementation for review by the trade community, taking into account comments they provide.*

A formal “notice and comment procedure” regulation was drafted and delivered to Customs under a previous task order. This procedure is not in practice at this time within any agency of the GOK⁵. As an alternative, the Trade and Investment Project has worked very closely with the Kazakhstan Customs in the development of a Customs Advisory Council comprised of members of the trade community (importers, exporters, brokers, transporters and warehouse operators) who are given the opportunity to review the drafts of proposed regulations and participate in the drafting process. At times the response from the trade community has been lackluster⁶. The Trade and Investment Project has shifted focus to attempt to gain a momentum within the trade community in the advisory process. One alternative has been to work with the Foreign Investors Council (FIC) Chaired by the President of Kazakhstan. The FIC in May of 2001 has tentatively agreed to form a Customs Working Group of its own to further expand its relations with Customs.

In the period of December 2000 and January 2001 the Ministry of Revenue took upon itself the task of “reorganizing” the Customs regulations. The USAID Trade and Investment Process actively participated in this unplanned activity to the fullest extent possible. While the breakneck speed that this undertaking was performed has resulted in a less than adequate job of regulation reorganization, one shining star in the process was the involvement of the trade community in a notice and comment type procedure. Following the example of Customs, the Ministry of Revenue invited members of the Customs Advisory Counsel to participate in the regulation review process. In addition, the draft regulations were posted on the Ministry of Revenue web site (www.mgd.kz) for public comment. This is the first time that draft Customs

⁵ *Notice and Comment procedures are normally based on an underlying national legislative act defining this procure. Agencies then publish an implementation plan. At the present time Kazakhstan does not have the underlying legislation for a notice and comment procedure. It is suggested that this should be an issue for general legislative reforms.*

⁶ *The Advisory Council started with great enthusiasm and drafted a total of 12 new regulations that were forwarded to the Ministry of Revenue where they died a somewhat unnatural death. Some of these proposals have been reborn at the Ministry. This again underscores some of the basic organizational problems.*

regulations have been this widely distributed for comment. The new regulations were released in June 2001 in both a book and interactive CD program that will be available to the public. The CD version permits key word search to simplify regulation research.

3. Assist Customs in developing a formal, selective inspection system in the country, and ensure proper implementation of the system.

The use of the selective inspection methodology is dependent of applying the use of risk management within the customs control process. Risk management is best achieved by using the power of an automated system to find anomalies within the declarations. The USAID Trade and Investment Project has strongly urged to Customs and the Ministry of Revenue to use already developed software packages for the Customs automated clearance process. The Ministry of Revenue has chosen to continue to follow with the development of a home grown system started almost 5 years ago under a contract issued to the local company, Accept. The USAID Trade and Investment Project has provided Customs, the Ministry of Revenue and the program design company selected to design the software for the Kazakhstan Customs with the World Customs Organization recommendations for the automation of Customs Administrations. The Kazakhstan Customs automation system is now advanced according to reports from the automation department that will permit a certain amount of selectivity in the clearance progress. Companies can be identified within the system that present a low risk. This is not a computer-generated selection but rather analogous to flipping a manual switch that will “green lane” or “red lane” the shipments. The USAID Trade and Investment Project has concentrated activities under this deliverable to providing the Customs with roll models and training on how to identify the opportunities to turn on the green lane switch.

The best opportunity to identify the companies that should be the subject of a reduced risk is using the process of post entry control. This is a modern customs methodology that is similar to the use of audits within the tax environment. The USAID Trade and Investment Project has taken the lead role in providing information to the Ministry of Revenue tax authorities and to the Customs Committee under the Ministry of Revenue on developing closer coordination between tax and customs authorities. This includes training sessions for Customs Post Entry Control teams and Ministry of Revenue tax officers on Custom valuation methodology and Value Added Tax (VAT) applications. The final training under this task order delivered during the first extension period was a workshop to Customs and Ministry of Revenue management of the development of the Task Force Concept. The result of this workshop was the drafting of an Order by the Participants for delivery to the Minister of Revenue and other Government Officials on the initiation of a pilot project for joint audits by Tax and Customs. The companies that will successfully pass this joint audit will be selected for “green lane” entries of commercial goods and simplified Customs procedures at the borders.

The Customs Committee in April of 2000 in conjunction with the Customs Advisory Council drafted a regulation on rules for using a red and green corridor system for passenger clearance. This proposed regulation along with several others to implement the changes in the Customs Code was forwarded to the Ministry of Revenue. The Ministry of State Revenues after much urging agreed to include this concept in the December 2000 review of the Customs regulations. The red/green corridor system is widely used by Customs Administrations as a method of facilitating the rapid clearance of passengers arriving into the country with non-commercial shipments. The Trade and Investment Project has worked with the Customs, the Advisory Council under the Customs Committee, and the Ministry of Revenue in the drafting of these regulations. The regulations on the red/green corridor have now been submitted to the Ministry of Justice and are currently pending approval. In anticipation of the approval of the regulation, the Customs has prepared the physical layout of the Customs Clearance facilities in Almaty and Astana airports for the use of this system of passenger selectivity.

4. Assist in the drafting of customs record keeping rules.

Formal draft regulation language for a regulation on record keeping rules was delivered to the Kazakhstan Customs under a previous task order. The formal record keeping rules have not been adapted, however substantial advancements in the process of the related process of Post Entry Control have been developed. This includes assistance in the development of a Division within the Customs Committee for Post Entry Control and the establishment of Post Entry Control Departments at each Customs House. With the developing activity for post entry control it is anticipated that the need for stronger, better-defined record keeping rules will be more apparent to Customs. It is suggested that this issue will be revisited following the further development of Customs under their Modernization program.

5. Assist the customs administrations of Kazakhstan and the Kyrgyz Republic with the preparation of implementation of customs modernization plans.

The USAID Trade and Investment Project has assisted the Kazakhstan Customs in the preparation of a Reform Program that is to be implemented in the years 2000 to 2002. The Modernization Plan was driven for a rapid development both by internal and external forces. Specifically the IMF required the development of the Customs Modernization Plan as a loan conditionally. As a result the plan has not been well developed and the USAID Trade and Investment Project Advisor has suggested that the Modernization Plan needs to be substantially modified. This Modernization Plan is formulated in Governmental Resolution 1746 dated November 22, 2000. The plan is very broad in scope and in our opinion overly ambitious for the time frame. The time frame for the implementation is already well behind schedule.

The USAID Trade and Investment Project recommended that the Kazakhstan Customs would benefit from the participation of the World Customs Organization in the formation of the Modernization Plan. Funding was allocated for this process in the amended contract and SOW entered into between USAID and the contractor in late August 2000. At that time the USAID Trade and Investment Project assisted the Kazakhstan Customs in the submission to the WCO for participation in this WCO program. Due to a series of delays in the submission, which required various levels of approval within the GOK, the submission did not go to the WCO until late 2000. In February 2001 the WCO requested an additional submission from the Kazakhstan Customs. The Trade and Investment Project assisted the Kazakhstan Customs in the submission of this supplemental information to the WCO. At this time, the WCO has identified that they are in the process of redeveloping the Modernization Program and can not accept Kazakhstan Customs in this process. Based on this late decision by the WCO, the contractor was unable to deliver this component. Further, there was insufficient time prior to May 31, 2001 to organize a proposed alternative using an independent contractor.

Working with a contractor from the Asian Development Bank, the Trade and Investment Project assisted the Asian Development Bank in conducting a "Problem Tree" analysis with managers from the Customs Committee. This 2-day activity will be used by the ADB to help the Customs in the design of a potential ADB funded Technical Assistance and Loan Program in Kazakhstan and other countries in the region. This approach is similar to the much larger World Customs Organization Diagnostic Study in that the objectives are to identify the underlying causes of what Customs identifies as their significant problems and helps prioritize to those base problems having the greatest impact. Customs has been encouraged to further develop internally this approach.

6. Assist the customs administrations of Kazakhstan and the Kyrgyz Republic in joining and implementing the Amended Kyoto Convention.

The USAID has assisted the Kazakhstan Customs in an internal review of the Customs Code and recommended that the GOK become a signatory to the amended Kyoto Convention. The review of the Customs Code and regulations was part of a preparation done by each of the member states of the Customs Union/EurAsia Economic Community for the development of a consolidated position on joining the amended Kyoto. To assist the Customs in the internal process the USAID Trade and Investment

Project conducted a training session to representatives from the Ministry of Foreign Affairs, Ministry of Finance and the Ministry of Revenue on the advantages to Kazakhstan in joining this important convention. The issue of amended Kyoto accession was also presented to the Foreign Investors Council during a roundtable on Customs issues in May 2001. The USAID Trade and Investment Project Advisor suggested to Customs that during the June 2001 annual general meeting of the Heads of the Customs Administrations at the World Customs Organization would be an excellent time for Kazakhstan to present a notice of intention to accede. It does not appear that the Kazakhstan Ministry of Foreign Affairs has completed the circulation of this proposal to the other Ministries for comment in a timely enough fashion for this date to be met.

7. *Provide training to Customs officials through both on-the-job training and through a series of seminars covering, at a minimum, the following areas: customs declaration, customs valuation, customs processing, customs clearance, and customs audit. The performance of customs officers at regional customs houses will be audited to determine whether customs rules are being properly applied, and to determine the effectiveness of training in order to provide remedial training. The training unit established under the previous task order will be further developed through drafting additional teaching notes for customs instructors on specific customs issues, training additional customs officers to teach using the notes, and monitoring their performance in classroom situations.*

The largest training activity during this project has been targeted at the expansion of the Customs role of public education. To this end, a training project was designed, where the USAID Trade and Investment Project assisted the Customs through a train the trainer approach in the design of a series of public information seminars delivered in Astana, Atyru, and Almaty to the trade community. The four topics selected for the seminars entitled “What every trader should know” included Customs valuation, Classification of Merchandise under the Harmonized System, Rules of Origin, and Customs Procedures. In the free to the public seminars approximately 600 participants attended. In addition to the 12 live deliveries; the trainers were each given the opportunity for the development of a videotape version of their presentation. Fifty copies of each of the four topic tapes have been produced. The Customs Committee will distribute the copies of the training tapes to each Customs House, where the videotapes are to be used for additional public information training sessions. The videotapes will provide the “core content” by the Kazakhstan Customs “Headquarters experts” for presentations by Customs public information officers.

Additional Activities Outside Deliverables

In addition to the tasks established under the contractual Scope of Work, the Trade and Investment Project routinely provided additional assistance as requested by USAID.

These included the following:

- Write briefing paper for State Department on customs issues for visit of Secretary of State M. Albright. (April 2000)
- At the request of the US State Department the Trade and Investment Project’s Customs Advisor to Kazakhstan participated for one week in the US State Department assessment for the preparation of the initiation of the Central Asia Border Security Initiative (CASI Program). (August 2000)
- Assist the American Embassy in Kazakhstan in the preparation of a report on restraints to trade in Kazakhstan (January 2001)

Individual Kyrgyz Republic Customs Deliverables Section

Kyrgyz Republic Customs Activities

- **Evaluate customs declaration and import and export procedures, and propose amendments to streamline and speed up customs processing,**
- **Recommend Revisions to customs implementing regulations and associated audit procedures.**

The following is the work delivered against the current contract relative to Customs in the Kyrgyz Republic.

All key components of the revised work plan were met. Sustained progress has been made under this Task Order, principally due to the fact that from March 2000 to June 2001 there have been only two Directors of the State Customs Inspectorate, Mr Azamat Kangeldiev and Mr Kalyk Imankulov. Consequently there have been relatively few changes of SCI staff, particularly in those Departments where the work is supported by technical assistance from the USAID Trade and Investment Project. Of particular benefit to the sustained progress of the Project was the appointment as Director, SCI in January 2001 of Mr Imankulov. Mr Imankulov has worked in the SCI for several years and has an extensive knowledge of customs administration and procedures. Formerly he held the position of Deputy Director and whilst holding this position was the main counterpart of the Project.

Also, both Mr Kangeldiev and Mr Imankulov have given their wholehearted support to the development and implementation of the Customs Reform and Modernization Plan, which followed the recommendations made in the IMF Report of October 1999⁷. The Plan was developed by the SCI with the advice and assistance of the USAID Trade and Investment Project working in close co-operation with both the SCI and the resident IMF Customs Advisor.

Task 8 of the Plan required the establishment of a Post-Import Verification Unit and was identified as being the one which should take precedence. Also, the successful operation of the ECD was considered to be fundamental to the introduction of simplified procedures under other Tasks. Consequently, during this Task Order, the assistance provided by the USAID Trade & Investment Project was primarily concerned with providing day to day advice and assistance to both the Head of the newly established External Control Department (Post-Import Verification Unit) and to the officials of the unit.

In addition to the key elements contained in the work plan, the Trade and Investment USAID Trade and Investment Project has provided assistance to the Government of the Kyrgyz Republic outside of the State Customs Inspectorate. The USAID Trade and Investment Project Customs Advisor is a member of the Parliamentary Working Group on Customs and has also been invited to attend sessions of Parliamentary Commission of Deputies dealing with the report on the implementation of Customs legislation. The USAID Trade and Investment Project has also worked in close conjunction with both the USAID Fiscal Reform and Regulatory Reform Projects.

Recognizing the importance of coordinating the activities of the various donor agencies the USAID Trade and Investment Project has maintained close contact and co-operation with TACIS (TRACECA), TACIS (Eurocustoms), Asia Development Bank, International Monetary Fund, and the Mission of the Russian Federation Customs to the SCI the Kyrgyz Republic

⁷ "Kyrgyz Republic: Customs Administration Reform and Modernization Plan" James Walsh, Guillermo Parayno and Anthony Sawyer, October 1999

SIGNIFICANT ACHIEVEMENTS

Significant achievements, which have been made, are as follows:

1. Implementation of the Customs Reform and Modernization Plan

Resolution No. 513 of 22 August 2000 "Customs Reform and Modernization Plan", approved the Plan which had been prepared by the State Customs Inspectorate with the assistance of the USAID Trade and Investment Project and the IMF Customs Adviser. The Resolution approved the Plan as submitted to the government without any amendments

It is significant, that, in a message to the people of the Kyrgyz Republic and to the Jogorku Kenesh of the Kyrgyz Republic, President Akaev emphasizes the importance of customs reform and modernization. The President refers specifically to the fact that there should be a reduction of customs controls at the border, which should be replaced by verification of import operations and also to the fact that there should be close co-operation and interaction between the State Customs Inspectorate and the State Tax Inspectorate.

2. Establishment by the State Customs Inspectorate of a Post-Import Verification Unit (External Control Department)

In August 2000, the Director approved the establishment of the External Control Department⁸ (Post-Import Verification Unit). Initially the ECD was comprised of a Head of Department, two Chief Inspectors, two Senior Inspectors and two Inspectors. In January 2001 two additional Inspectors were appointed to the Department.

Although restricted by the terms of Resolution No. 189 (see Barriers to Progress below) the ECD reported collection of 3million soms in underpayments of customs import duty and taxes and penalties during the first quarter of 2001 from five companies of fifteen visited

3. Assessment /Testing of Customs Officials

On the instructions of the Director, SCI a computer program was developed to enable an assessment to be made of customs officials at all levels. Using questions randomly generated from a computer program; all customs officials were required to be tested in order to assess their knowledge of customs legislation, customs procedures and operational techniques

4. Closer Co-operation between the State Tax Inspectorate and the State Customs Inspectorate

The USAID Trade and Investment project has expanded the work begun in the previous Task Order and continued to work closely with the USAID Fiscal Reform Project to develop closer co-operation between the SCI and the STI so that a cross-functional relationship can be established.

In April 2000, the USAID Trade and Investment Project held a joint SCI/STI Workshop on the formation of a Task Force (Revenue Mobilization Team) during which a legal Memorandum and legal Agreements were drafted to be presented to the Minister of Finance, Prime Minister's Office and the Office of the President. The Director SCI and the Director STI have both affirmed their support and this will be a priority focus of the follow-on project.

⁸ *The External Control Department (Post-Import Verification Team) of the State Customs Inspectorate (SCI), Kyrgyz Republic was established in accordance with SCI Order No. 115-1 of 14 February 2000 in concurrence with the requirements of Task No.8 of the "Plan of Measures for the Reform and Modernization of the Customs Service of the Kyrgyz Republic 2000-2003" (Customs Reform Plan).*

BARRIERS TO PROGRESS.

A major barrier to progress which has not yet been overcome is that the terms of Resolution No. 189⁹ prevent the SCI from carrying out post-import verifications without the prior authority of the Anti-Monopoly Commission. When the Resolution was passed there was immediate forceful protestation from the Director, SCI, the IMF Customs Adviser and the USAID Trade and Investment Project all of whom submitted sound reasons for the exclusion of customs from the requirements of the terms of the Resolution and drew the attention of the government to international practices of customs administrations. An amendment was drafted which would to exclude customs from this requirement. Unfortunately the amendment is still being circulated within the various Ministries for the approval of each one and but an amending Resolution has not been passed.

Customs Deliverables

1. *Provide advice, as needed, to the State Customs Inspectorate of the Kyrgyz Republic, and assist in performing day-to-day activities to ensure appropriate implementation of streamlined customs procedures.*

The USAID Trade and Investment Project provided assistance and advice, both verbal and written, as needed and where necessary provided on-the job instruction to help resolve operational problems

Specifically, requests by the Head of the Customs Payments Department relating to classification and valuation problems required extensive research into commercial practices followed by an explanation and translation of appropriate documents.

These related to:

A. CLASSIFICATION OF IMPORTED GOODS IN ACCORDANCE WITH THE GOODS NOMENCLATURE FOREIGN ECONOMIC ACTIVITY (ТН ВЕД)¹⁰

The USAID Trade and Investment Project provided advice and assistance to the Customs Payments Department concerning the classification of kitchen furniture units and electrical and gas appliances to be "built-in" to those units which are being manufactured/assembled in the Free Economic Zone, Bishkek for subsequent importation into the Kyrgyz Republic for "free circulation" after payment of duties and taxes.

Approximately seventy items were required to be classified and the Project instructed officials of the Customs Payments and Revenue Department on the application of the General Rules for the Interpretation of the Harmonized System" using the application of GRI 2(a) together with GRI 6 to classify them in the appropriate sub-headings, and on the use of the "Explanatory Notes to the Harmonized System Nomenclature" and the legal classifiable in the Kyrgyz Republic in terms of Article 164 of the Customs Code as read with Resolution No. of 9th November 1999 "On Approving the Customs Tariff of the Kyrgyz Republic for 2000".

⁹ *The purpose of Resolution No. 189 was to reduce the number of inspections by government agencies by introducing procedures which requires authorization from the Anti-Monopoly Commission before an inspection can be made. The State Tax Inspectorate was excluded from this requirement but not the State Customs Inspectorate. This restriction makes it virtually impossible to carry out successful post-import verification and consequently is a major barrier to simplifying procedures at the border posts.*

¹⁰ *The ТН ВЕД is a goods nomenclature in use in the former CIS States and is essentially the Harmonized System Commodity Description and Coding System*

B. VALUATION OF IMPORTED GOODS IN ACCORDANCE WITH THE REQUIREMENTS OF THE WTO CUSTOMS VALUATION AGREEMENT

This particular problem concerned two aspects of customs valuation of imported color monitors (Visual Display Units) for computers.

First, the "discounted" value of the goods was dependant on the importer buying or having bought, other items specified in the contract, in sufficient "volumes" (specified quantities) and second, the amount of the freight charge shown on the airway bill exceeded the value of the goods shown on the Customs Declaration.

In terms of the Order "On Customs Valuation of Goods imported Into the Kyrgyz Republic" Section Titled "Requirements in respect of the Application of the method Based on the Transaction Value of Imported Goods (Conditions for Applying method 1) paragraph states that the transaction value shall not be acceptable for customs purposes if (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.

The foreign supplier provided a "General Statement" stating that the freight charges shown on the Air Waybill were completed in accordance with IATA Rules and do not reflect the actual freight charges paid. Subsequently, the USAID trade and Investment Project was able to ascertain that it is common practice internationally for airlines to give freight forwarders either "net/net rates" (below IATA rates) or commission of the IATA rates. It is also common practice for the shipper to complete the AWB to show freight charges with a higher rate (and amount), than that actually paid.

The USAID Trade and Investment project advised and instructed the Customs to review the information available and use it to determine the appropriate method to be applied in accordance with the WTO Valuation Agreement and the national legislation.

2. *Draft and recommend a "notice and comment" procedure for customs rule making in all three countries. This is a procedure by which Customs would be required to publish proposed rules in advance of their implementation for review by the trade community, taking into account comments they provide.*

A formal "Notice and Comment Procedure" regulation was drafted and delivered to the SCI under a previous Task Order. The procedure is not currently in practice within any agency of the Government of the Kyrgyz Republic.

However an encouraging step towards having proposed changes reviewed by the trade community is that the Director has agreed to the formation of a Working Group comprising Customs and representatives from the Business Community. Letters were sent to various companies, organizations and government agencies to establish interest in such a Working group. There was an encouraging response and the Director will nominate the Deputy Director to be responsible for setting agendas and holding meetings.

3. *Assist Customs in developing a formal, selective inspection system in the country, and ensure proper implementation of the system.*

This is incorporated in the Custom Reform and Modernization Plan under Tasks 9 and 10

4. *Assist in the drafting of customs record keeping rules.*

A formal draft regulation on record keeping rules was delivered to the State Customs Inspectorate under a previous task order but the formal record keeping rules have not been adapted,

However the initial experiences of the External Control Department (Post-Import Verification) when verifying importers' records confirms that there is an urgent requirement for the introduction of rules which specify in detail the records which should be maintained by importers and this issue will be dealt with further during the development of the Customs Reform and Modernization Plan.

5. Assist the customs administrations of Kazakhstan and the Kyrgyz Republic with the preparation of implementation of customs modernization plans.

The "Plan of Measures for the Reform and Modernization of the Customs Service of the Kyrgyz Republic 2000 - 2003" was approved by the Government of the Kyrgyz Republic in accordance with Resolution No. 513 of 22 August 2000 "On Measures for the Reform and Modernization of the Customs Service of the Kyrgyz Republic".

The T&I Project worked in co-operation with the State Customs Inspectorate and the IMF Customs Adviser during the preparation of the Plan. Following regular meetings with the Mr Anthony Sawyer, IMF Customs Adviser and the Director, SCI, to discuss USAID T&I Project inputs to SCI Reform and Modernization Plan, it was agreed that Project would be responsible for advising on and assisting with Tasks 7, 8, 9 and 10. This formed the basis of the T & I Customs Work Plan for 2000 as these Tasks were directly related to the objectives and deliverables in the Restated Task Order.

The following are the relevant Tasks listed in the SCI Reform and Modernization Plan. Against each Task is given a summary of the action required together with details of the action being taken or already taken by the SCI with the advice and assistance of the USAID Trade and Investment Project.

Task 7.

Summary:

The Implementation of simplified procedures for the processing of customs import declarations; the payment of duty and taxes; the physical inspection of imported goods and the post-release verification of duty and taxes due.

Action:

In August 2000 an experimental simplified procedure was introduced for the clearance of goods imported by 21 approved importers through Ak-Jol Road Border Post for clearance at Bishkek Custom House. The procedures allowed the goods to be cleared in accordance with a procedure, which required fewer stages than normal customs entry-processing procedures. Control over the importers will be by post-import verification by the External Control Department. In March 2001 this concession was extended to a further 21 approved importers for goods entering through the Customs Posts of Bishkek 1, Konteineraya, Alamedin, Railway Station and Severnaya Railway Station for clearance at Severnaya Custom House.

Task 8.

Summary:

The establishment of a post-release verification team in SCI headquarters concentrating on valuation, origin and tariff classification. The team should be comprised of 8 to 10 staff and its functions would provide a valuable additional check on any potential revenue leakage in addition to producing significant additional revenue

Action:

Note: Task 8 was identified as a priority Task as the introduction of the simplified procedures and the selectivity procedures under other Tasks are dependent upon the establishment of an efficient and effective Post-Import Verification Unit

The External Control Department (Audit Team) of the State Customs Inspectorate (SCI), the Kyrgyz Republic was established in accordance with SCI Order No. 115-1 of 14 February 2000 in concurrence with the requirements of Task No.8 of the "Plan of Measures for the Reform and Modernization of the Customs Service of the Kyrgyz Republic 2000-2003" (Customs Reform Plan). This was approved by Resolution No. 513 of 22 August 2000.

The terms of Task 8 are set out under the main heading of "POST-RELEASE VERIFICATION" and these are to establish a post-release verification team in SCI headquarters to concentrate on valuation, origin and tariff classification and provide a valuable additional check on any potential revenue leakage. (IMF Mission Recommendation No.10)

Accordingly, the function of the Audit Team is to carry out post-release verification of imported goods to ensure that the customs value has been properly declared, that the goods have been properly classified in accordance with the Goods Nomenclature Foreign Economic Activity (TH BED) and that the correct amount of duties and taxes has been paid. Also, where the imported goods are the subject of any preferential tariff agreement that the country of origin is correctly declared.

Initially, the ECD was faced with the problem of working with limited resources and equipment as well as not having access to any informational database. Also within the first six months there were changes of personnel resulting in lack of continuity. The ECD was established without any prior training in risk management, risk assessment or risk analysis and it was necessary to explain the concept of post-import verification and assist them to begin work using the information available. The ECD began by scrutinizing import declarations and supporting documents for selected types of goods imported during a specific period. The USAID Trade and Investment Project worked with them on a daily basis to develop their work.

The USAID Trade and Investment Project provided day to day advice and assistance to the Head of the External Control Department with the setting up and the preparation of the necessary basic information/intelligence to carry out fundamental risk assessment and analysis. Identified problems relating to lack of equipment and importers not fulfilling their legal obligations in respect of documents to be produced for post-importation verifications. Discussions were held with State Customs Inspectorate, Statistical Section and State Tax Inspectorate, (Computer Section.) to determine means for Audit Team to have access to informational databases held in both administrations. Subsequently the ECD was increased by the addition of an IT expert from the Statistical Department and their computers linked directly to the database.

Although the majority of the ECD are experienced customs officials, they required practical training in "post-import verification" methods and techniques. To achieve this, the USAID Trade and Investment Project held regular Workshops on the following subjects:

- Principles and methodology of Risk Management and Risk Analysis
- Analysis of revenue by Custom House, by importer, by types of goods according to the TH BED
- Principles of Value Added Tax and the collection of VAT on goods imported into the KR

- WCO Valuation Case Study (Brazil Customs Administration) - facts of the case virtually identical to a verification being made on the importation of chickens and chicken quarters
- WTO Customs Valuation Agreement and relevant application of KR customs legislation
- New CIS Rules of origin¹¹
- Scrutiny of importers documents to determine authenticity, invoice requirements, methods of payment for imports, the legal obligations of importers concerning customs valuation and the preparation of standard format letters requesting information from importers.; analysis of import documents to establish whether or not freight paid separately, advice on action to be taken when fraud suspected
- Methods of legal communication with foreign customs administrations
- Analysis of revenue collected by Custom House, Tariff Chapter and Tariff Heading and Importer.
- Extraction and Use of information held on the database of the Statistical Department of the SCI
- Commercial records and accounts
- Classification of goods in accordance with the Harmonized System. Classification of waste and scrap metal. The ECD was faced with a particular problem concerning used motor vehicle parts that were being described as "scrap" metal. On inspection it was considered that the spare parts were still capable of being used after renovation. The members of the ECD were instructed in the use of the "Explanatory Notes to the HS Convention to resolve this issue.

Task 9.

Summary:

The introduction of selective risk-based approach toward the escorting of vehicles, with the long-term objective of phasing out the use of customs escorts except in the most pressing cases. A system should be introduced using cash deposits and guaranties and ensuring that sufficient details of the goods is collected at the border point to assess duties and taxes if the goods disappear. Appropriate notification of departure should be transmitted quickly to the Customs office of arrival, and only approved routes should be used with checks from time-to-time by anti-smuggling teams

Action:

The SCI has developed a methodology for risk assessment to control goods and vehicles crossing the border where the goods are to be cleared for "free circulation. This is based on the assessed physical security of the goods measured against certain conditions e.g. Licensed carrier, low duty goods vehicle/container approved to international standards. Where these conditions are satisfied, the goods may be removed under customs control without customs escort.

¹¹ New CIS Rules of Origin were adopted by Resolution No. 134 of 27 March 2001 which approved the decision of the Council of Heads of the Governments of the Commonwealth of independent States "On Rules for the Determination of the Country of Origin of Goods" of 30 November 2000, which introduced revised Rules and replaced and repealed the Decision of 24 September 1993.

These were incorporated into presentations given by the Trade and Investment project at Public Information Seminars held in Bishkek and Osh and also used as the basis for practical applications discussed at Workshops held for the External Control Department.

Task 10.

Summary:

The introduction of a risk-based system of cargo inspection where greater attention is paid to goods of higher risk imported by unknown or suspicious traders, and less attention to low-risk goods imported by regular importers. This would mean that only those vehicles selected for inspection would be unloaded

Action

A risk-based system of cargo inspection will be introduced within the simplified procedures described under Task 7.

6. Assist the customs administrations of Kazakhstan and the Kyrgyz Republic in joining and implementing the Amended Kyoto Convention.

On 29 May 2000, at the CIS Customs meeting in Bishkek Mr M Ashikulov, Head of Administration of the Office of the President announced that the Government of the KR intended to become a signatory to the amended Kyoto Convention. After signing the Convention the SCI will have five years to fully implement the international standards for customs procedures set out in the General Annexe to the Revised Kyoto Convention.

The USAID Trade and Investment Project has assisted the State Customs Inspectorate, KR in an internal review of the Customs Code and recommended that the Government of the KR become a signatory to the amended Kyoto Convention.

The review of the Customs Code and regulations was part of a preparation done by each of the member states of the Customs Union/EurAsia Economic Community for the development of a consolidated position on joining the amended Kyoto. The USAID Trade and Investment Project was one of the key presenters during the CIS Customs Conference and gave a presentation on the amended Kyoto Convention

7. Provide training to Customs officials through both on-the-job training and through a series of seminars covering, at a minimum, the following areas: customs declaration, customs valuation, customs processing, customs clearance, and customs audit. The performance of customs officers at regional customs houses will be audited to determine whether customs rules are being properly applied, and to determine the effectiveness of training in order to provide remedial training. The training unit established under the previous task order will be further developed through drafting additional teaching notes for customs instructors on specific customs issues, training additional customs officers to teach using the notes, and monitoring their performance in classroom situations.

Following on from activities during the previous Task Order, the USAID Trade and Investment Project during a course combined with the Netherlands Customs (Eurocustoms) delivered training on administration of the On-the-Job Training Program and training methodology to Kyrgyz Customs officials selected as Field Training Coordinators.

Further training activity during this project has been directed towards developing the Customs role of informing and educating the public on basic customs procedures. To this end, a training project was designed, where the USAID Trade and Investment Project assisted the Customs through a train the trainer approach in the design of a series of public information seminars delivered in Bishkek and Osh to the business community. The topics selected for the seminars included Customs valuation, Classification of Merchandise under the Harmonized System, Rules of Origin, and Customs Procedures.

During the month of June 2001, all customs officials were tested to assess their knowledge of customs legislation, customs procedures and customs techniques. All customs officials were required to take the test at the SCI building under supervision of members of Commission and with the assistance of computer technical staff (if required) - separate examinations were held in Osh for officers from Osh, Jalal-Abad and Batken Custom Houses.

The testing was done in accordance with a method, which had previously been suggested by the USAID Trade and Investment Project. The officers being tested were required to answer questions which were generated randomly by a computer program from a database of approximately 300 questions. Each officer was required to answer fifteen questions on general subjects and fifteen on subjects related to the area of his current work.

The subjects and the number of related questions held in the test database were: Customs Control Department (60); Indirect Taxation Department (40); Country of Origin and System for Granting Tariff Protection (20); Customs Tariff (20); Customs Payments and Taxes (20); Customs Value (40); Statistics Department (20); Contraband (20); Drugs Trafficking (20); Department of Investigation and Inquiry (20); Use of Force, Special Means and Arms (20); Customs Investigation Department (20)

Additional Activities Outside Deliverables

In addition to the tasks established under the contractual Scope of Work, the Trade and Investment Project routinely provided additional deliverables as requested by USAID and other USAID Projects

These included the following:

Input of customs component into USAID Trade and Investment Project, SME Project

The agenda of the first three SME seminars comprised approximately two-thirds customs related topics. These included an explanation of the concept of free trade areas and the customs unions together with a general overview of the separate Free Trade Area Agreements of the Kyrgyz Republic and the Customs Union Agreement. The difference between customs duties, other taxes and charges having equivalent effect to the customs duties and internal taxes applied on imports was explained as well as the agreements regarding transportation and transit issues, and their practical impact on traders. The progress towards the simplification of customs procedures in Central Asia, the components necessary for customs reform in the Kyrgyz Republic and achievements of the Kyrgyz Republic State Customs Inspectorate in this field. The representative of the State Customs Inspectorate, spoke about principles and methods of customs valuation, work of customs points and rights of traders when contacting customs officials.

USAID Regulatory Reform Project

USAID Trade and Investment Project has had regular consultations with USAID Regulatory Reform Project to co-ordinate the responsibilities of the SCI in relation to production of certificates for imported goods, to discuss simpler procedures and the acceptance of internationally recognized certificates as well as the use of Harmonized System Codes by the various government departments when determining commodities for which licenses/certificates are required.

Parliamentary Customs Working Group

Following a USAID presentation on the various projects to the Jogorku Kenesh several Parliamentary Working Groups were formed including a Customs Working Group. The Customs Advisor of the USAID Trade & Investment Project was invited to be a member of the Working Group. Due to pressure of work

related to parliamentary activities, to date there has been only a preliminary meeting to determine the exact role of the Working Group in relation to the State Customs Inspectorate.